IN THE

Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY and G. GARIBALDI, executor of the last will of B. W. Jauchius, deceased,

Plaintiffs in error,

vs.

ALFRED SHEPARD,

Defendant in error.

In error to the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California:

BRIEF FOR PLAINTIFFS IN ERROR.

PART FIRST.

STATEMENT OF FACTS.

The action in the Court below was brought against the defendant Tulare Irrigation District by the plaintiff,

who claimed to be the owner of bonds issued by said district, to obtain a judgment against said district for various amounts alleged to have fallen due from time to time upon the coupons attached to the bonds. Judgment was given in favor of plaintiff as prayed for, and from this judgment the present writ of error is taken to this Court.

As appears from the contentions set up in the pleadings of defendant and intervenors, and from the objections taken by them to the evidence offered by the plaintiff, and from the nature of the evidence which they sought to introduce, these parties relied upon what they claimed to be rights protected by the provisions of the United States constitution, and attacked certain statutes of the State of California as in conflict with that constitution. It thus appears from the record, that the case is one involving the construction or application of the constitution of the United States and one in which a law of the state is claimed to be in contravention of that constitution.

COMPLAINT.

In the complaint it is alleged that the plaintiff is a citizen of the State of Michigan and a non-resident of the State of California; that the defendant is and at all times since September 2, 1889, has been a corporation, to wit: an irrigation district, organized under and pursuant to an act of the California Legislature providing for the organization of such districts, and that ever since the last named date defendant has acted and still

is acting as such corporation under said statute and its amendments; that all of the land in said district is in the County of Tulare.

That in May, 1890, the directors of the district estimated the amount of money necessary to be raised for the purpose of constructing the necessary canals and works and acquiring the necessary water and property and rights therefor, and of otherwise carrying out the provisions of the said Act, and estimated and determined the necessary amount to be the sum of $500,000, and that said board immediately called an election of the electors of the district to submit to them the question whether the bonds of the district should be issued in the amount of $500,000. That notice of said election was given by posting in each precinct of the district for at least twenty days and by publication in a newspaper published in Tulare County, once a week for three successive weeks, which notices so posted and published specified the time of the election and the amount of the proposed bonds.

That at said election a majority of the votes cast were in favor of the bonds being issued to the amount of $500,000, there being 384 votes in favor of and 50 against said bonds, and that thereupon said Board of Directors caused the bonds of said defendant in the amount of $500,000 to be issued.

Then follow allegations showing the numbers, face value and form of the bonds, and of the interest coupons thereto attached. Exhibits are attached to the com-

plaint showing the form of the bonds and coupons.

It is next alleged that a portion of said bonds were, by said defendant and its board of directors, sold, issued and delivered for at least ninety per cent of their par value, and the proceeds used for the construction of canals and irrigation works, and that the remaining part of said bonds were exchanged and delivered at their par value for the conveyance to said district of water, water rights and other property for irrigation purposes, and that said district was thereby enabled to and has irrigated the land of such district.

That the parties who received from the district upon sale and exchange the bonds and coupons specifically referred to by their numbers in said complaint, sold, transferred and delivered the same to innocent and *bona fide* purchasers for the full value thereof, which said purchasers took said bonds and coupons in good faith and without any notice of any defect or invalidity of the same. Said bonds are then enumerated by reference to their numbers.

It is next alleged that the defendant paid regularly the first eleven installments of interest on said bonds, but has not paid any part of certain other installments of interest. The complaint then specifically enumerates these last mentioned installments. It is then alleged that all of said unpaid coupons were delivered to the plaintiff prior to October 1, 1898, and the plaintiff has ever since been the owner, holder and bearer thereof. That plaintiff bought a part of said unpaid coupons be-

fore their maturity and paid their full value, without any notice of any defect or invalidity of the same, and that the remainder of said unpaid coupons were transferred to plaintiff by parties who had purchased the same before their maturity in good faith for full value and without any notice of any defect or invalidity of the same. Then follows a specific enumeration by numbers of the bonds to which the coupons bought by plaintiff before their maturity are attached.

It is then alleged, that before the commencement of this action and on October 9, 1898, plaintiff presented to the Treasurer of the defendant at the office of said Treasurer in Tulare, all of said unpaid coupons, and demanded from said Treasurer payment of said coupons; that said Treasurer refused to pay said coupons or any of them or any part thereof.

The complaint closed with a prayer for judgment against the defendant for the sum of $13,185 with interest at the rate of six per cent per annum upon the various unpaid installments from the time when they respectively fell due.

DEMURRER.

The defendant, Tulare Irrigation District, filed a demurrer to the foregoing complaint. This demurrer was on the ground that the complaint does not state facts sufficient to constitute a cause of action against the defendant, and on the further ground that it was uncertain in certain specified particulars, and that it was ambiguous and unintelligible in the same respects.

ANSWER.

The answer denies that the defendant was ever incorporated as an irrigation district, or that it ever acted as such otherwise than as in the answer set forth; denies that the directors ever made any estimate or determination of the money necessary for irrigation work, or that they called an election to determine whether bonds should be issued, except as in the answer set forth. Denies that notice of such election was given in any way or for any time otherwise than as set forth in the answer; or that a majority or any number of votes were cast at said election in favor of the bonds, except as set forth in the answer. Denies that the Directors caused the bonds to be issued except as in the answer set forth; denies that the bonds were issued in any form, manner or amount except as stated in the answer; denies that any of the bonds were ever sold, issued or delivered for ninety or any per cent of their par value, or that the proceeds were used for canals or irrigation works for defendant; denies that any part of the bonds were issued or delivered at the par value for water, water rights or other property for irrigation purposes, or that the defendant has thereby or otherwise been enabled to or has irrigated the lands of the district. Denies that the bonds and coupons specified in the complaint were sold to *bona fide* purchasers for full value and without notice of all defects and invalidity of the same. Denies that defendant paid installments of the interest on said bonds, except as set forth in the answer. Denies that

plaintiff bought any part of the unpaid coupons mentioned in the complaint prior to the maturity of such coupons, for full value and without notice of all defects and invalidity, or acquired the rest of said coupons from persons who had purchased them prior to their maturity for full value without notice of all defects and invalidity.

The answer sets forth in full the petition for the formation of the district, and alleges that no other petition for the formation of said district was ever presented to or filed with the Board of Supervisors. It alleges the publication of said petition for two weeks in a newspaper, together with a notice of the presentation to the Supervisors of the petition, which notice is set forth in full in the answer, and it is alleged that no other notice of the hearing of said petition was ever given or published, and that said notice was not signed by the petitioners, or by any one, and was void and illegal, and that all proceedings based on it were illegal and without jurisdiction and in violation of the 14th amendment to the constitution of the United States. The answer sets forth in full an order of the Board of Supervisors postponing the hearing of the said petition and an order establishing the boundaries of the district and its precincts, and calling an election on the question whether a district shall be formed and for the election of officers of such district; it also sets forth in full an order of the Board of Supervisors declaring the result of the election, and declaring certain specifically described lands to be constituted the Tulare Irrigation District.

The answer sets forth in full the bond filed with the said petition, and alleges that the same was invalid, in that it did not bind its signers to perform the acts which the law requires and was not made payable to the payee designated by the law, and its sureties were parties who appeared in the petition as petitioners. The answer alleges that no notice of the election concerning the formation of the district was given; that no copy of the order declaring the district organized was filed by the Supervisors with the County Recorder; that the Supervisors excluded from the district part of the land described in the petition, and that the land so excluded was susceptible of irrigation by the same system of works as the rest of the land. It is further alleged that no proceedings for the organization of the district other than those set forth in the answer were ever taken or had.

It is further alleged that by reason of the facts already set forth, the attempted organization was a nullity; that the district was never legally organized; that its so-called officers had no power to issue bonds or coupons, and that the pretended bonds and coupons are void and were issued in violation of the XIVth amendment to the constitution of the United States.

The answer further alleges that a pretended election for the purpose of determining whether bonds should be issued in the sum of $500,000 was attempted to be held on the 7th day of June, 1890, and that said election was declared by an order of the Board of Directors to have been carried in favor of the issuance of bonds in

said sum, and that thereafter the Directors ordered that bonds in said sum be issued in the manner and form prescribed by law.

That at no time since the pretended organization of the district was a system of works or one mode of irrigation from a common source of supply ever established or located, nor was any common source of supply located or established for any irrigation system, nor was any system of irrigation ever established for or by said district, and no line of canals and branches for the irrigation of the land of the district was ever fixed or determined. It is further alleged that none of the bonds of the district have been used in the purchase, at the par value thereof, of any water, water rights or other property necessary for an irrigation system, nor have any of said bonds been sold for ninety per cent of the face value thereof, but that the Directors have disposed of the $500,000 of bonds in exchange for water rights, canals and ditches which were worthless and unavailable for the purpose of irrigating lands in said district, and in payment for labor on canals in the district, and in furnishing security for the payment of notes executed by members of the Board of Directors. It is further alleged that no notice of intention to exchange any of said bonds for ditches and water rights was ever given, and said exchanges of said bonds were illegal and void. It is further alleged that bonds exchanged for work done in the district and for canals, ditches and water rights, were taken at prices much less than the

par value thereof, and that the said labor, canals, ditches and water rights were taken at a price greatly in excess of their value, and that the Board of Directors were aware of these facts, and that said exchanges of bonds were unlawful, oppressive and fraudulent.

It is further alleged that all the bonds issued by the district recite that they are issued by authority of the Act of March 7th, 1887, and that in the sale, exchange or disposal of said bonds there was no warranty of their validity.

It is further alleged that none of the lands in the district is or ever was desert in character, but that it had for many years produced agricultural crops without artificial irrigation; and that a large portion of the land in the district is not susceptible of irrigation, and would not be benefited but would be injured thereby.

It is further alleged that upon the hearing of the petition for the organization of the district, the Board of Supervisors established and defined the boundaries of the district, but that as so established and as set forth in the order of the Board of Supervisors, the district consisted of four non-contiguous tracts of land, and that the Board had no power or jurisdiction to establish a district of this kind.

That the Act of March 7th, 1887, in so far as it attempts to confer on the Supervisors authority to conduct proceedings for the organization of irrigation districts is in conflict with the provisions of the con-

stitution of California relating to the delegation of legislative powers by the state legislature.

The answer then alleges that in August, 1890, the directors of the district instituted a proceeding in the Superior Court of Tulare County for the judicial approval and confirmation of the proceedings for the organization of the district and for the issuance of bonds.

The answer sets forth the substance of the petition in said confirmation proceeding, and alleges that in May, 1898, an answer to said petition was filed by leave of Court. This answer is set forth, in substance, showing allegations of various facts relied upon as grounds for the contention that the district and the bonds are illegal and void.

It is then alleged, that after the filing of said answer, such proceedings were had in the confirmation proceeding that on November 23rd, 1898, the Superior Court entered an order, which order is set forth in full. It is an order refusing to confirm the proceedings for the organization of the district and the issuance of bonds, and adjudging and decreeing all of these proceedings to be null and void.

The answer then sets up the statute of limitations as against plaintiff's claims and concludes with a prayer that plaintiff take nothing by the action, and that he be required to deliver to the Court all the coupons and bonds mentioned in the complaint, and that it be

adjudged and decreed that such bonds and coupons are illegal and void, and that they be cancelled and destroyed, and that plaintiff be enjoined from transferring or circulating them.

THE COMPLAINT IN INTERVENTION.

A complaint in intervention was filed by two intervenors, B. W. Jauchius and G. G. Kelly. This contained the same denials and allegations as the answer of the defendant, Tulare Irrigation District, with an additional allegation to the effect that the intervenors were owners of land within the district. By written stipulation of counsel for all the parties, it was agreed that the allegations of the complaint in intervention should be deemed to be denied. This stipulation was approved by the Court and filed.

TRIAL AND DECISION.

The case was thereupon tried and submitted to the Court for consideration and decision (a jury trial having been waived by written stipulation of the parties before the commencement of the trial). Counsel representing all the parties entered into two written stipulations as to the facts, and portions of these stipulations were offered in evidence by the plaintiff, and other portions of the same by the defendant and intervenors. Other evidence was offered by each side. After the submission of the case, as aforesaid, the Court, on the 30th day of March, 1901, decided the same in favor of the plaintiff. There were no specific findings but merely a

general finding in favor of the plaintiff on all the issues joined, and an assessment of plaintiff's damages at the sum of $13,185. Thereafter, the defendant and intervenors moved the Court for a new trial, and pending said motion the same parties moved the Court to set aside and vacate the findings, and to make findings in favor of the defendant, on the ground that there was no evidence whatever to justify the findings for the plaintiff. The Court denied these motions.

Thereafter, on the 30th day of March, 1901, judgment was entered in favor of the plaintiff in the sum of $13,185.

Within the time allowed by law and by the stipulations of the parties and orders of Court in that behalf made, the defendant and intervenors presented to the Court their proposed bill of exceptions, which was duly allowed, settled and approved by the Court on April 4th, 1901.

Thereafter, B. W. Jauchius, one of the intervenors, died, and his will was admitted to probate and letters testamentary thereon issued to G. Garibaldi, one of the plaintiffs in error herein.

Thereafter said G. Garibaldi filed in the office of the Clerk of said Circuit Court a certified copy of said letters testamentary.

Thereafter, on December 23rd, 1901, the plaintiffs in error herein presented their petition for a writ of error, together with their assignments of error, which writ of

error was by order of the Court duly allowed on said date; and the bond on writ of error, as required and fixed by order of the Court, was duly given and filed. Whereupon the writ of error and citation were duly issued and served, and the answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, with the record and all proceedings, were duly certified to this Court.

QUESTIONS INVOLVED.

The plaintiffs in error contend that the judgment rendered in the Court below is erroneous and should be reversed, because,

1. The attempted organization of the Tulare Irrigation District was entirely ineffectual and void, by reason of non-compliance with various essential conditions imposed by the statute under and pursuant to which the attempt to form the district was made. Among these conditions is the publication of a notice of the hearing of the petition for the formation of the district. No such notice as that provided for by the statute was ever published or given, and the pretended notice which was published was so radically defective as to amount to no notice whatever; and therefore the proceedings looking toward the formation of the district were wholly ineffective, and the so-called district is and always was a mere nullity, and conse-

quently the so-called bonds of the district were likewise null and void.

This question was raised by the defendant's demurrer to the complaint (*Record* p. 15), since, in order to state a cause of action, the complaint should have shown affirmatively that the statutory notice was given. It arose also upon the ruling of the Court (*Record* p. 300), sustaining the plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts (*Record* p. 236) and an exhibit annexed to said stipulation and marked Exhibit "C" (*Record* p. 253). The evidence thus rejected was such as to show the exact character of the only notice of the hearing of the petition for the formation of the district which was ever published or given, and that such pretended notice was fatally defective.

The question also arose upon the ruling of the Court (*Record* p. 270), overruling the objection to the introduction in evidence of the first twelve paragraphs of the stipulation of facts (*Record* pp. 223–236), which, together with an exhibit annexed to said stipulation and marked "Exhibit A" (*Record* p. 239), were offered by the plaintiff. The evidence thus offered was irrelevant, immaterial and incompetent, because it contained no showing of the existence of the facts essential to the valid and lawful organization of the alleged district, but consisted wholly of a showing of the existence of the district as a *de facto* organization, and of the issuance of bonds by parties claiming to be

the officers of this *de facto* organization, and of the purchase and negotiation of these bonds.

2. The records of the Board of Supervisors in the proceedings for the formation of the district fail to show that such publication of the notice of the hearing of the petition for the formation of the district was made as is prescribed by the statute; and hence it follows that the records of the Board of Supervisors do not disclose upon their face the existence of the jurisdictional facts which were conditions precedent to the creation of the proposed district. The result is that the action of the supervisors in attempting the formation of the district must be treated as unauthorized and ineffective.

This question arises upon the ruling of the Court (*Record* p. 300), sustaining the plaintiff's objection to the introduction in evidence of the 15th paragraph of the stipulation of facts (*Record* p. 237), and the exhibit marked "D" (*Record* p. 253), annexed to said stipulation. This evidence was such as to fully disclose the contents of all of the orders of the board relating to the publication of the above mentioned notice.

3. It was permissible, even in a collateral action, to prove the absence of such a jurisdictional fact as the due publication of the notice of hearing of the petition for the formation of the district; and this could be done even if it involved contradicting the recitals in the orders or other records of the Board of Supervisors.

The question arises upon the above-mentioned ruling of the Court sustaining the plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts and an exhibit annexed to said stipulation and marked "Exhibit C". The evidence thus rejected was such as to show that no notice of the hearing of the petition for the formation of the district was ever given as required by law; and the contention of the plaintiffs in error is that they were entitled to show this even if it were assumed (though this is not admitted by plaintiffs in error), that the records of the Board of Supervisors contained recitals, which, if true, would establish the fact of notice.

4. The plaintiffs in error were entitled to show that the notice of the hearing of the petition for the formation of the district was fatally defective, in spite of the fact that in the case of *Central Irrigation District* vs. *DeLappe* (79 Cal. 351), the Supreme Court of California had held a district to be duly organized by proceedings in which the notice was open to the same objections as those relied on here. No question as to the sufficiency of the notice upon which the due organization of Central District depended was raised or considered in the *DeLappe case*, and afterwards, when the sufficiency of this notice was called in question before the Supreme Court of California (*In re Central Irrigation District*, 117 Cal. 382), it was held to be fatally defective. It thus appears that the decision in the *DeLappe case*, cannot be treated as having established the validity of

such a notice as that involved in that case. The decision did not become a rule of property within the doctrine of the case of *Gelpcke* vs. *City of Dubuque*, 1 Wall. 175.

This question arises upon the above mentioned ruling of the Court sustaining plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts and an exhibit annexed to said stipulation and marked "Exhibit C", which evidence disclosed the fatal insufficiency of the notice in question.

5. The plaintiffs in error cannot be precluded from questioning the validity of the district or the validity of its purported bonds, by the device of setting up the *de facto* existence of the district. Even if the district were a corporation *de facto*, it would not follow that it could issue bonds which would be a charge upon the lands within the boundaries of the district. Before such burdens can be imposed, the land owner must be accorded a hearing upon the question whether his land will be benefited by being included within the proposed district. To subject his lands to the burden of the bonds of the district, without giving the notice of the hearing of the petition for the formation of the district which the law requires, would be to deprive him of his property without due process of law, in violation of the XIVth amendment to the constitution of the United States. This objection cannot be disposed of by the device of calling the district a *de facto* corporation, and, on that ground, refusing to inquire whether an essen-

tial condition precedent of the formation of the district has been fulfilled. Unless the notice of the hearing of the petition for the formation of the district has been given as prescribed by law, the pretended organization is absolutely void, and open to collateral attack by the owner of property which it is sought to subject to the burden of bonds which the *de facto* district has assumed to issue.

This question arose upon the ruling of the Court (*Record* p. 270) overruling the objection to the introduction in evidence of the second paragraph (*Record* p. 223) of the stipulation of facts. This evidence was offered by plaintiff, and was objected to on the ground, among others, that it did not tend to prove the *de jure* existence of the district, and that evidence of its *de facto* character was incompetent, immaterial and irrelevant.

The question arose also upon the above mentioned ruling of the Court sustaining plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts, and the "Exhibit C" annexed thereto, which rejected evidence was such as to show that no valid notice of the hearing of the petition for the formation of the district had ever been given.

6. The decree in the so-called confirmation proceeding declaring valid the organization of the district and the bonds issued by the district, cannot so bind and conclude the plaintiffs in error as to preclude an inquiry in the case at bar as to whether due notice of the hearing of the petition for the formation of the district was

given. These confirmation proceedings were not intended to be conclusive of the rights of landowners or of any other parties. Such is the proper construction of the statute which provides for the proceedings in question, and to construe it as providing for a decree which shall be conclusive of the rights of landowners within the district, either as an adjudication or as evidence, would be to render it obnoxious to the objection of being in conflict with the provisions of the XIVth amendment to the constitution of the United States that no state shall deprive any person of property without due process of law. The statute does not provide for such notice to the landowner of the confirmation proceeding as would amount to due process of law, if the decree in the proceeding were intended to operate as an adjudication of the landowner's rights.

Moreover, if the intention of the state legislature was to make the decree in a confirmation proceeding conclusive of the rights of landowners, the statute is in contravention to the provision of the XIVth amendment to the constitution of the United States that no state shall deny to any person within its jurisdiction the equal protection of the laws, and is also in conflict with the prohibition of special legislation found in section 25 of article IV of the constitution of California.

It is not pretended that the confirmation decree can be conclusive of the rights of the bondholder; and, this being so, to make it conclusive of the landowner's rights would be to unwarrantably discriminate against the

latter and in favor of the former. Again, there is no valid ground or reason for denying to the parties to be affected by a confirmation proceeding the method of notification which the laws of California insure to the parties in ordinary civil actions.

These questions arose upon the ruling of the Court (*Record* p. 297) overruling the objection to the introduction in evidence by the plaintiff of copy of the judgment roll in a proceeding entitled, "In the Matter of the Tulare Irrigation District", the same being what is termed a confirmation proceeding of the kind provided for by an Act of the California legislature, approved March 16th, 1889 (Cal. Stats. of 1889, p. 212). The question arose also upon the above mentioned ruling of the Court sustaining the plaintiff's objection to the introduction in evidence of the 14th paragraph of the stipulation of facts, and an exhibit annexed thereto and marked "Exhibit C". The evidence thus rejected was such as to show the insufficiency of the notice of the hearing for the formation of the district, and was admissible notwithstanding any confirmation decree which may have been rendered.

7. The decree of confirmation was without force and void, because, not only does the judgment roll in the confirmation proceeding fail to show affirmatively that the steps necessary to the acquisition of jurisdiction were taken, but, on the contrary, it affirmatively appears that they were not taken. It affirmatively appears that the Court did not, as the statute requires,

adjudge that notice had been given as prescribed by the *statute, and it further* appears upon the face of the roll that an attempt was made to give notice of the filing of the petition for confirmation, in a mode different from that prescribed by the statute. The statute provides that the notice shall be given and published by the Clerk of the Court. The judgment roll shows that the person who posted the notices was a person other than the Clerk, or his deputy, to-wit: the Secretary of the Board of Directors of the district (*Record* p. 282). The record thus shows that the method of giving notice actually adopted was invalid, and as it cannot be presumed that anything else was done in addition to what the record shows, it follows that it appears from the face of the judgment roll that the Court never acquired jurisdiction, and that the confirmatory decree was a nullity.

This question arose upon the above-mentioned ruling of the Court overruling the objection of defendants and intervenors to the introduction in evidence by the plaintiff of the judgment roll above referred to. The question also arose indirectly in connection with the various rulings of the Court (to which we refer specifically under other headings of this statement), excluding evidence offered by plaintiffs in error tending to show fatal defects in the proceedings looking towards the organization of the district and the issuance of the bonds.

8. The decree of confirmation was void, for the reason that neither the petition in the confirmation pro-

ceeding nor the notice of the filing thereof nor the decree itself contained any description or designation of any of the boundaries of the district. Due process of law demands that the territory embraced within the boundaries of the district should be described so as to enable the owners thereof to determine whether they were likely to be affected by the proceeding.

This question arose in the same manner as the question set forth under the next preceding heading.

9. The decree of confirmation cannot operate as an obstacle to the investigation of questions concerning the fatally defective nature of the proceedings leading up to the organization of the district and the issuance of the bonds, for the reason that said decree was vacated and set aside by the Court which rendered it, and was superseded by a later decree of said Court declaring said organization proceedings and said bonds to be null and void.

This question arose upon the ruling of the Court (*Record* p. 412) sustaining plaintiff's objection to the admission in evidence of a certified copy of the judgment roll in the confirmation proceeding, said copy showing, in addition to what appears in the copy of the roll put in evidence by the plaintiff, the steps subsequent to the decree of confirmation, and the later decree by which that decree was superseded (*Record* pp. 398–412).

10. The provision in the Wright Act as amended in

1891 (Cal. Stats. 1891, p. 144), to the effect that no action shall be commenced or maintained, or defense made, affecting the validity of the organization of a district otherwise than within two years after the date of the order declaring the district organized, cannot preclude the plaintiffs in error from showing the fatal defects in the proceedings looking towards the formation of the Tulare district. This statutory provision is an attempt to compel persons already in the possession and enjoyment of their property to resort to legal proceedings in anticipation of future attempts to deprive them of it. As such the provision is invalid as an attempt to deprive persons of property without due process of law. Again, as a special statute of limitation it is in violation of the prohibition of special legislation containing in subdivisions 3rd, 32nd and 33rd of section 25 of article IV of the constitution of California. In the next place, this limitation clause in the amendment to the Wright Act is void because it is not germane to the original Act nor within the scope of its title as required by section 24 of article IV of the constitution of California. Moreover, it has been repealed by a subsequent statute, the Bridgeford Bill (Cal. Stats. 1897, pp. 254–287), which is a complete revision of and substitute for the Wright law, and which contains no such provisions as that above mentioned.

This question arose upon the above-mentioned ruling of the Court overruling the objection to the introduction in evidence of the first twelve paragraphs of the

stipulation of facts. In the 10th paragraph of said stipulation (*Record* p. 227) it is stated that no suit or action was ever brought until after the year 1895, wherein the validity of any of the bonds was in anywise questioned, and this evidence was objected to as incompetent, irrelevant and immaterial. The question also arose in connection with the exclusion by the Court of the evidence offered by plaintiffs in error tending to show the fatal defects in the proceedings looking towards the formation of the district and the issuance of bonds.

11. The attempted organization of the district was void, because the order of the Board of Supervisors so defined its boundaries as to make the district consist of four separate, non-contiguous tracts of land, contrary to the provision of the statutes authorizing the formation of irrigation districts.

This question arose upon the ruling of the Court (*Record* p. 300) sustaining plaintiff's objection to the admission in evidence of the 16th paragraph (*Record* p. 237) of the stipulation of facts and the exhibit attached thereto marked "Exhibit E" (*Record* p. 262). This evidence showed the exact terms of the order entered on the minutes of the Board of Supervisors and purporting to establish the district and define its boundaries.

12. There was no evidence whatever to sustain or justify the general finding in favor of the plaintiff. The evidence introduced by him was not such as to show the *de jure* existence of the district, and such a showing

was essential and could not be supplied by proof of the existence of the district as a *de facto* corporation.

This question arose upon the motion of the defendant and intervenors that the findings in favor of plaintiff be vacated and findings in favor of the defendant and intervenors substituted for them (*Record* p. 421).

CALIFORNIA STATUTES INVOLVED.

CONSTITUTION OF CALIFORNIA, Art. IV, Secs. 24 and 25.

"*Titles of acts—Amendment of Statutes.*

"SEC. 24. Every act shall embrace but one subject, "which subject shall be expressed in its title. But if "any subject shall be embraced in an act which shall not "be expressed in its title, such act shall be void only as "to so much thereof as shall not be expressed in its "title. No law shall be revised or amended by refer- "ence to its title; but in such case the act revised or "section amended shall be re-enacted and published at "length as revised or amended; and all laws of the state "of California, and all official writings, and the exe- "cutive, legislative, and judicial proceedings, shall be "conducted, preserved, and published in no other than "the English language.

"*Local and special legislation.*

"SEC. 25. The legislature shall not pass local or "special laws in any of the following enumerated cases, "that is to say:

"*First*—Regulating the jurisdiction and duties of "justices of the peace, police judges, and of constables.

"*Second*—For the punishment of crimes and mis- "demeanors.

"*Third*—Regulating the practice of courts of justice.

"*Fourth*—Providing for changing the venue in civil "or criminal actions.

"*Fifth*—Granting divorces.

"*Sixth*—Changing the names of persons or places.

"*Seventh*—Authorizing the laying out, opening, "altering, maintaining, or vacating roads, highways, "streets, alleys, town plats, parks, cemeteries, grave- "yards, or public grounds not owned by the state.

"*Eighth*—Summoning and impaneling grand and "petit juries, and providing for their compensation.

"*Ninth*—Regulating county and township business, "or the election of county and township officers.

"*Tenth*—For the assessment or collection of taxes.

"*Eleventh*—Providing for conducting elections, or "designating the places of voting, except on the organ- "ization of new counties.

"*Twelfth*—Affecting estates of deceased persons, "minors, or other persons under legal disabilities.

"*Thirteenth*—Extending the time for the collection "of taxes.

"*Fourteenth*—Giving effect to invalid deeds, wills, or "other instruments.

"*Fifteenth*—Refunding money paid into the state "treasury.

" *Sixteenth*—Releasing or extinguishing, in whole or " in part, the indebtedness, liability, or obligation of any " corporation or person to this state, or to any muni- " cipal corporation therein.

" *Seventeenth*—Declaring any person of age, or auth- " orizing any minor to sell, lease, or encumber his or " her property.

" *Eighteenth*—Legalizing, except as against the state, " the unauthorized or invalid act of any officer.

" *Nineteenth*—Granting to any corporation, associa- " tion, or individual any special or exclusive right, " privilege, or immunity.

" *Twentieth*—Exempting property from taxation.

" *Twenty-first*—Changing county seats.

" *Twenty-second*—Restoring to citizenship persons " convicted of infamous crimes.

" *Twenty-third*—Regulating the rate of interest on " money.

" *Twenty-fourth*—Authorizing the creation, exten- " sion, or impairing of liens.

" *Twenty-fifth*—Chartering or licensing ferries, " bridges, or roads.

" *Twenty-sixth*—Remitting fines, penalties, or for- " feitures.

" *Twenty-seventh*—Providing for the management of " common schools.

" *Twenty-eighth*—Creating offices, or prescribing the " powers and duties of officers in counties, cities, cities " and counties, townships, election or school districts.

" *Twenty-ninth*—Affecting the fees or salary of any " officer.

" *Thirtieth*—Changing the law of descent or suc- " cession.

" *Thirty-first*—Authorizing the adoption or legitima- " tion of children.

" *Thirty-second*—For limitation of civil or criminal " actions.

" *Thirty-third*—In all other cases where a general " law can be made applicable."

THE WRIGHT ACT, Cal. Stats. 1887, pp. 29-45.

(pp. 29–45)

" CHAPTER XXXIV.

" *An Act to provide for the organization and government* " *of irrigation districts, and to provide for the acqui-* " *sition of water and other property, and for the dis-* " *tribution of water thereby for irrigation purposes.*

" [Approved March 7, 1887.]

" *The People of the State of California, represented in* " *Senate and Assembly, do enact as follows:*

" SECTION 1. Whenever fifty or a majority of free- " holders owning lands susceptible of one mode of irri- " gation from a common source, and by the same sys- " tem of works, desire to provide for the irrigation of " the same, they may propose the organization of an " irrigation district under the provisions of this Act, " and when so organized such district shall have the " powers conferred or that may hereafter be conferred " by law upon such irrigation districts.

" SEC. 2. A petition shall first be presented to the " Board of Supervisors of the county in which the lands " or the greatest portion thereof is situated, signed by " the required number of freeholders of such pro- " posed district, which petition shall set forth and " particularly describe the proposed boundaries of such " district, and shall pray that the same may be organ- " ized under the provisions of this Act. The petitioners " must accompany the petition with a good and sufficient " bond, to be approved by the said Board of Supervisors, " in double the amount of the probable cost of organiz- " ing such district, conditioned that the bondsmen will " pay all said cost in case said organization shall not " be effected. Such petition shall be presented at a " regular meeting of the said Board, and shall be pub- " lished for at least two weeks before the time at which " the same is to be presented, in some newspaper " printed and published in the county where said " petition is presented, together with a notice stating " the time of the meeting at which the same will be " presented. When such petition is presented, the said " Board of Supervisors shall hear the same, and may " adjourn such hearing from time to time, not exceed- " ing four weeks in all; and on the final hearing may " make such changes in the proposed boundaries as " they may find to be proper, and shall establish and " define such boundaries; *provided*, that said Board shall " not modify said boundaries so as to except from the " operation of this Act any territory within the bound-

" aries of the district proposed by said petitioners,
" which is susceptible of irrigation by the same system
" of works applicable to the other lands in such pro-
" posed district, nor shall any lands which will not in
" the judgment of the said Board, be benefited by irri-
" gation by said system be included within such dis-
" trict; *provided*, that any person whose lands are sus-
" ceptible of irrigation from the same source shall, upon
" application of the owner to said Board, be entitled to
" have such lands included in said district. Said board
" shall also make an order dividing said district into
" five divisions, as nearly equal in size as may be prac-
" ticable, which shall be numbered First, Second,
" Third, Fourth, and Fifth, and one Director shall be
" elected from each district. Said Board of Supervisors
" shall then give notice of an election to be held in such
" proposed district, for the purpose of determining
" whether or not the same shall be organized under the
" provisions of this Act. Such notice shall describe
" boundaries so established, and shall designate a name
" for such proposed district, and said notice shall be
" published for at least three weeks prior to such elec-
" tion in a newspaper published within said county; and
" if any portion of such proposed district lie within
" another county or counties, then said notice shall be
" published in a newspaper published within each of
" said counties. Such notice shall require the electors
" to cast ballots which shall contain the words, 'Irriga-
" 'tion District—Yes'; or, 'Irrigation District—No,' or

" words equivalent thereto; and also the names of per-
" sons to be voted for to fill the various elective offices
" hereinafter prescribed. No person shall be entitled
" to vote at any election held under the provisions of
" this Act unless he shall possess all the qualifications
" required of electors under the general election laws of
" this State.

" SEC. 3. Such election shall be conducted in accord-
" ance with the general election laws of the State, pro-
" vided that no particular form of ballot shall be re-
" quired. The said Board of Supervisors shall meet on
" the second Monday next succeeding such election,
" and proceed to canvass the votes cast thereat; and if
" upon such canvass it appear that at least two-thirds
" of all the votes cast are 'Irrigation District—Yes,'
" the said Board shall, by an order entered on their
" minutes, declare such territory duly organized as an
" irrigation district, under the name and style thereto-
" fore designated, and shall declare the persons receiv-
" ing, respectively, the highest number of votes for
" such several offices to be duly elected to such offices.
" Said Board shall cause a copy of such order, duly
" certified, to be immediately filed for record in the of-
" fice of the County Recorder of each county in which
" any portion of such lands are situated, and must also
" immediately forward a copy thereof to the Clerk of
" the Board of Supervisors of each of the counties in
" which any portion of the district may lie; and no
" Board of Supervisors of any county, including any

" portion of such district, shall, after the date of the " organization of such district, allow another district to " be formed including any of the lands in such district, " without the consent of the Board of Directors thereof; " and from and after the date of such filing, the organ- " ization of such district shall be complete, and the " officers thereof shall be entitled to enter immediately " upon the duties of their respective offices, upon qual- " ifying in accordance with law, and shall hold such " offices repectively, until their successors are elected " and qualified. For the purposes of the election above " provided for, the said Board of Supervisors must es- " tablish a convenient number of election precincts in " said proposed district, and define the boundaries " thereof, which said precincts may thereafter be " changed by the Board of Directors of such district.

" SEC. 4. An election shall be held in such district " on the first Wednesday in April, eighteen hundred " and eighty-eight, and on the first Wednesday in " April in each second year thereafter, at which an " Assessor, a Collector, and a Treasurer, and a Board of " five Directors for the district shall be elected. The per- " son receiving the highest number of votes for any office " to be filled at such election is elected thereto. Within " ten days after receiving their certificates of election, " hereinafter provided for, said officers shall take and " subscribe the official oath and file the same in the " office of the Board of Directors. The Assessor shall " execute an official bond in the sum of ten thousand

" dollars, and the Collector an official bond in the sum " of twenty thousand dollars, and the district Treasurer " an official bond in the sum of fifty thousand dollars; " each of said bonds to be approved by the Board of " Directors; and each member of said Board of Directors " shall execute an official bond in the sum of twenty- " five thousand dollars, which said bonds shall be ap- " proved by the Judge of the Superior Court of said " county where such organization was effected, and " shall be recorded in the office of the County Recorder " thereof, and filed with the Secretary of said Board. " All official bonds herein provided for shall be in the " form prescribed by law for the official bonds of county " officers.

" SEC. 5. Fifteen days before any election held " under this Act, subsequent to the organization of any " district, the Secretary of the Board of Directors shall " cause notices to be posted in three public places in " each election precinct, of the time and place of hold- " ing the election, and shall also post a general notice " of the same in the office of said Board, which shall be " established and kept at some fixed place to be deter- " mined by said Board, specifying the polling places of " each precinct. Prior to the time for posting the no- " tices, the Board must appoint for each precinct, from " the electors thereof, one inspector and two Judges, who " shall constitute a Board of Election for such precinct. " If the Board fail to appoint a Board of Election, or " the members appointed do not attend at the opening

" of the polls on the morning of election, the electors of " the precinct present at that hour may appoint the " Board, or supply the place of an absent member " thereof. The Board of Directors must, in its order ap- " pointing the Board of Election designate the house or " place within the precinct where the election must be " held.

" SEC. 6. The Inspector is Chairman of the Election " Board and may—

" *First*—Administer all oaths required in the pro- " gress of an election.

" *Second*—Appoint Judges and Clerks if, during the " progress of the election, any Judge or Clerk cease to " act. Any member of the Board of Election, or " any Clerk thereof, may administer and certify " oaths required to be administered during the progress " of an election. The Board of Election for each pre- " cinct must, before opening the polls, appoint two per- " sons to act as Clerks of the election. Before opening " the polls, each member of the Board and each Clerk " must take and subscribe an oath to faithfully perform " the duties imposed upon them by law. Any elector " of the precinct may administer and certify such oath. " The polls must be opened one hour after sunrise on " the morning of the election, and be kept open until " sunset, when the same must be closed. The pro- " visions of the Political Code concerning the form of " ballots to be used shall not apply to elections under " held this Act.

"SEC. 7. Voting may commence as soon as the "polls are opened, and may be continued during all the "time the polls remain opened, and shall be conducted "as nearly as practicable in accordance with the pro- "visions of chapter nine of title two of part three of "the Political Code of this State. As soon as the "polls are closed, the Judges shall open the ballot-box "and commence counting the votes; and in no case "shall the ballot-box be removed from the room in "which the election is held until all the ballots have "been counted. The counting of ballots shall in all "cases be public. The ballots shall be taken out one "by one, by the Inspector or one of the Judges, who "shall open them and read aloud the names of each "person contained therein, and the office for which "every such person is voted for. Each Clerk shall "write down each office to be filled, and the name of "each person voted for for such office, and shall keep "the number of votes by tallies, as they are read aloud "by the Inspector or Judge. The counting of votes "shall be continued without adjournment until all "have been counted.

"SEC. 8. As soon as all the votes are read off and "counted, a certificate shall be drawn up on each of "the papers containing the poll list and tallies, or "attached thereto, stating the number of votes each one "voted for has received, and designating the office to "fill which he was voted for, which number shall be "written in figures and in words at full length. Each

" certificate shall be signed by the Clerk, Judge, and the " Inspector. One of said certificates, with the poll list " and the tally paper to which it is attached, shall be " retained by the Inspector, and preserved by him at " least six months. The ballots shall be strung upon " a cord or thread by the Inspector, during the count- " ing thereof, in the order in which they are entered " upon the tally list by the Clerks; and said ballots, " together with the other of said certificates, with the " poll list and tally paper to which it is attached, shall " be sealed by the Inspector in the presence of the " Judges and Clerks, and indorsed 'Election Returns " 'of (naming the precinct) Precinct,' and be directed to " the Secretary of the Board of Directors, and shall be " immediately delivered by the Inspector, or by some " other safe and responsible carrier designated by said " Inspector, to said Secretary, and the ballots shall be " kept unopened for at least six months, and if any " person be of the opinion that the vote of any pre- " cinct has not been correctly counted, he may appear " on the day appointed for the Board of Directors to " open and canvass the returns, and demand a recount " of the vote of the precinct that is so claimed to have " been incorrectly counted.

" SEC. 9. No list, tally paper, or certificate returned " from any election, shall be set aside or rejected for " want of form, if it can be satisfactorily understood. " The Board of Directors must meet at its usual place " of meeting on the first Monday after each election to

" canvass the returns. If, at the time of meeting, the " returns from each precinct in the district in which " the polls were opened have been received, the Board " of Directors must then and there proceed to canvass " the returns, but if all the returns have not been re- " ceived, the canvass must be postponed from day to " day until all the returns have been received, or until " six postponements have been had. The canvass must " be made in public and by opening the returns and " estimating the vote of the district, for each person " voted for, and declaring the result thereof.

" SEC. 10. The Secretary of the Board of Directors " must, as soon as the result is declared, enter in the " records of such Board, a statement of such result, " which statement must show:

" *First*—The whole number of votes cast in the " district.

" *Second*—The names of the persons voted for.

" *Third*—The office to fill which each person was " voted for.

" *Fourth*—The number of votes given in each pre- " cinct to each of such persons.

" *Fifth*—The number of votes given in the district " to each of such persons.

" The Board of Directors must declare elected the " person having the highest number of votes given for " each office to be filled by the votes of the district. " The Secretary must immediately make out and de- " liver to such person a certificate of election signed

" by him and authenticated with the seal of the Board. " In case of a vacancy in the office of Assessor, Tax " Collector, or Treasurer, the vacancy shall be filled by " appointment by the Board of Directors. In case of " a vacancy in the office of member of the Board of " Directors, the vacancy shall be filled by appointment " by the Board of Supervisors of the county where the " office of such Board is situated. An officer appointed " as above provided, shall hold his office until the next " regular election for said district, and until his suc- " cessor is elected and qualified.

" SEC. 11. On the first Wednesday in May next " following their election the Board of Directors shall " meet and organize as a Board, elect a President from " their number, and appoint a Secretary. The Board " shall have the power, and it shall be their duty, to " manage and conduct the business and affairs of the " district, make and execute all necessary contracts, " employ and appoint such agents, officers and em- " ployes as may be required, and prescribe their duties, " establish equitable by-laws, rules, and regulations for " the distribution and use of water among the owners " of said lands, and generally to perform all such acts " as shall be necessary to fully carry out the purposes " of this Act. The said by-laws, rules, and regulations " must be printed in convenient form for distribution " in the district. And it is hereby expressly pro- " vided that all waters distributed for irrigation pur- " poses shall be apportioned ratably to each land

" owner upon the basis of the ratio which the last " assessment of such owner for district purposes within " said district bears to the whole sum assessed upon " the district; *provided*, that any land owner may as- " sign the right to the whole or any portion of the " waters so apportioned to him.

" SEC. 12. The Board of Directors shall hold a regu- " lar monthly meeting, in their office, on the first Tues- " day in every month, and such special meetings as " may be required for the proper transaction of busi- " ness; *provided*, that all special meetings must be " ordered by a majority of the Board; the order must " be entered of record, and five days' notice thereof " must, by the Secretary, be given to each member not " joining in the order. The order must specify " the business to be transacted, and none other than " that specified must be transacted at such special " meeting. All meetings of the Board must be pub- " lic, and three members shall constitute a quorum for " the transaction of business, but on all questions re- " quiring a vote, there shall be a concurrence of at " least three members of said Board. All records of " the Board shall be open to the inspection of any " elector during business hours. The Board, and its " agents and employes, shall have the right to enter " upon any land in the district to make surveys, and " may locate the line for any canal or canals, and the " necessary branches for the same, on any of said " lands which may be deemed best for such location.

"Said Board shall also have the right to acquire, either "by purchase or condemnation, all lands and waters, "and other property necessary for the construction, use, "supply, maintenance, repair, and improvement of said "canal or canals and works, including canals and works "constructed and being constructed by private owners, "lands for reservoirs, for the storage of needful waters, "and all necessary appurtenances. In case of pur- "chase, the bonds of the district, hereinafter provided "for, may be used at their par value in payment; and in "case of condemnation, the Board shall proceed, in the "name of the district, under the provisions of title "seven, of part three, of the Code of Civil Procedure. "Said Board may also construct the necessary dams, "reservoirs, and works for the collection of water for "said district, and do any and every lawful act neces- "sary to be done, that sufficient water may be fur- "nished to each land owner in said district for irriga- "tion purposes. The use of all water required for the "irrigation of the lands of any district formed under "the provisions of this Act, together with the rights "of way for canals and ditches, sites for reservoirs, and "all other property required in fully carrying out the "provisions of this Act, is hereby declared to be a "public use, subject to the regulation and control of "the State, in the manner prescribed by law.

"SEC. 13. The legal title to all property acquired "under the provisions of this Act shall immediately "and by operation of law vest in such irrigation dis-

" trict, and shall be held by such district in trust for " and is hereby dedicated and set apart to the uses " and purposes set forth in this Act. And said Board " is hereby authorized and empowered to hold, use, " acquire, manage, occupy, and possess said property " as herein provided.

" SEC. 14. The said Board is hereby authorized and " empowered to take conveyances or other assurances " for all property acquired by it under the provisions " of this Act, in the name of such irrigation district, " to and for the uses and purposes herein expressed, " and to institute and maintain any and all actions " and proceedings, suits at law or in equity, necessary " or proper in order to fully carry out the provisions " of this Act, or to enforce, maintain, protect, or pre- " serve any and all rights, privileges, and immunities " created by this Act or acquired in pursuance thereof. " And in all Courts, actions, suits, or proceedings, " the said Board may sue, appear, and defend, in " person or by attorneys, and in the name of such " irrigation district.

" SEC. 15. For the purpose of constructing neces- " sary irrigating canals and works and acquiring the " necessary property and rights therefor, and otherwise " carrying out the provisions of this Act, the Board of " Directors of any such district must, as soon after " such district has been organized as may be practi- " cable, estimate and determine the amount of money " necessary to be raised, and shall immediately there-

" upon call a special election, at which shall be sub-
" mitted to the electors of such district possessing the
" qualifications prescribed by this Act, the question
" whether or not the bonds of said district shall be
" issued in the amount so determined. Notice of such
" election must be given by posting notices in three
" public places in each election precinct in said district
" for at least twenty days, and also by publication of
" such notice in some newspaper published in the
" county, where the office of the Board of Directors of
" such district is required to be kept, once a week for
" at least three successive weeks. Such notices must
" specify the time of holding the election, the amount
" of bonds proposed to be issued, and said election
" must be held and the result thereof determined and
" declared, in all respects as nearly as practicable, in
" conformity with the provisions of this Act govern-
" ing the election of officers; *provided*, that no infor-
" malities in conducting such an election shall invali-
" date the same, if the election shall have been other-
" wise fairly conducted. At such election the ballots
" shall contain the words, 'Bonds—Yes,' or 'Bonds—
" No,' or words equivalent thereto. If a majority of
" the votes cast are 'Bonds—Yes,' the Board of Direc-
" tors shall immediately cause bonds in said amount to
" be issued; said bonds shall be payable in gold coin
" of the United States, in installments as follows, to
" wit: At the expiration of eleven years not less than
" five per cent of said bonds; at the expiration of

" twelve years not less than six per cent; at the expira-
" tion of thirteen years not less than seven per cent;
" at the expiration of fourteen years not less than eight
" per cent; at the expiration of fifteen years not less
" than nine per cent; at the expiration of sixteen years
" not less than ten per cent; at the expiration of seven-
" teen years not less than eleven per cent; at the ex-
" piration of eighteen years not less than thirteen per
" cent; at the expiration of nineteen years not less than
" fifteen per cent; and for the twentieth year a percent-
" age sufficient to pay off said bonds; and shall bear in-
" terest at the rate of six per cent per annum, payable
" semi-annually on the first day of January and July of
" each year. The principal and interest shall be pay-
" able at the office of the Treasurer of the district.
" Said bonds shall be each of the denomination of not
" less than one hundred dollars, nor more than five
" hundred dollars, shall be negotiable in form, signed
" by the President and Secretary, and the seal of the
" Board of Directors shall be affixed thereto. They
" shall be numbered consecutively as issued, and bear
" date at the time of their issue. Coupons for the in-
" terest shall be attached to each bond signed by the
" Secretary. Said bonds shall express on their face
" that they were issued by authority of this Act,
" stating its title and date of approval. The Secre-
" tary shall keep a record of the bonds sold, their num-
" ber, the date of sale, the price received, and the name
" of the purchaser.

"SEC. 16. The Board may sell said bonds from time "to time, in such quantities as may be necessary and "most advantageous, to raise money for the construc- "tion of said canals and works, the acquisition of said "property and rights, and otherwise to fully carry out "the objects and purposes of this Act. Before making "any sale the Board shall, at a meeting, by resolution, "declare its intention to sell a specified amount of "the bonds, and the day and hour and place of such "sale, and shall cause such resolution to be entered in "the minutes, and notice of the sale to be given, by "publication thereof at least twenty days, in a daily "newspaper published in each of the Cities of San "Francisco, Sacramento, and Los Angeles, and in any "other newspaper, at their discretion. The notice "shall state that sealed proposals will be received by "the Board, at their office, for the purchase of the "bonds, till the day and hour named in the resolution. "At the time appointed the Board shall open the "proposals, and award the purchase of the bonds to "the highest responsible bidder, and may reject all "bids; but said Board shall in no event sell any of the "said bonds for less than ninety per cent of the face "value thereof.

"SEC. 17. Said bonds, and the interest thereon, shall "be paid by revenue derived from an annual assess- "ment upon the real property of the district; and all "the real property in the district shall be and remain "liable to be assessed for such payments as herein-

" after provided.

" SEC 18. The Assessor must, between the first Mon-
" day in March and the first Monday in June, in each
" year, assess all real property in the district, to the
" persons who own, claim, have the possession or con-
" trol thereof, at its full cash value. He must prepare
" an assessment book, with appropriate headings, in
" which must be listed all such property within the
" district, in which must be specified, in separate
" columns, under the appropriate head:

" *First*—The name of the person to whom the prop-
" erty is assessed. If the name is not known to the
"Assessor, the property shall be assessed to 'Unknown
" 'Owners.'

" *Second*—Land by township, range, section, or frac-
" tional section, and when such land is not a con-
" gressional division or subdivision, by metes and
" bounds, or other description sufficient to identify it,
" giving an estimate of the number of acres, locality,
" and the improvements thereon.

" *Third*—City and town lots, naming the city or
" town, and the number and block according to the
" system of numbering in such city or town, and the
" improvements thereon.

" *Fourth*—The cash value of real estate, other than
" city or town lots.

" *Fifth*—The cash value of improvements on such
" real estate.

" *Sixth*—The cash value of city and town lots.

"*Seventh*—The cash value of improvements on city "and town lots.

"*Eighth*—The cash value of improvements on real "estate assessed to persons other than the owners of "the real estate.

"*Ninth*—The total value of all property assessed.

"*Tenth*—The total value of all property after equali- "zation by the Board of Directors.

"*Eleventh*—Such other things as the Board of Di- "rectors may require.

"SEC. 19. The Board of Directors must allow the "Assessor as many deputies, to be appointed by him, as "will, in the judgment of the Board, enable him to "complete the assessment within the time herein pre- "scribed. The Board must fix the compensation of "such deputies, which shall be paid out of the Treas- "ury of the district. The compensation must not ex- "ceed five dollars per day for each deputy, for the time "actually engaged, nor must any allowance be made "but for work done between the first Monday in "March and the first Monday in August in each "year.

"SEC. 20. On or before the first Monday in August "in each year the Assessor must complete his assess- "ment book, and deliver it to the Secretary of the "Board, who must immediately give notice thereof, "and of the time the Board of Directors, acting as a "Board of Equalization, will meet to equalize assess- "ments, by publication in a newspaper published in

'each of the counties comprising the district. The
'' time fixed for the meeting shall not be less than
" twenty nor more than thirty days from the first pub-
" lication of the notice; and in the meantime the assess-
" ment book must remain in the office of the Secretary
' for the inspection of all persons interested.

" SEC. 21. Upon the day specified in the notice re-
" quired by the preceding section for the meeting, the
" Board of Directors, which is hereby constituted a
" Board of Equalization for that purpose, shall meet
" and continue in session from day to day, as long as
" may be necessary, not to exceed ten days, exclusive
" of Sundays, to hear and determine such objections to
" the valuation and assessment as may come before
" them; and the Board may change the valuation as
" may be just. The Secretary of the Board shall be
" present during its sessions, and note all changes made
" in the valuation of property, and in the names of the
" persons whose property is assessed; and within ten
" days after the close of the session he shall have the
" total values, as finally equalized by the Board, ex-
" tended into columns and added.

" SEC. 22. The Board of Directors shall then levy
" an assessment sufficient to raise the annual interest
" on the outstanding bonds; and at the expiration of
" ten years after the issuing of bonds by the Board,
" must increase said assessment, for the ensuing ten
" years, in the following percentage of the principal of
" the whole amount of bonds then outstanding, to-wit:

" For the eleventh year, five per cent; for the twelfth " year, six per cent; for the thirteenth year, seven per " cent; for the fourteenth year, eight per cent; for the " fifteenth year, nine per cent; for the sixteenth year, " ten per cent; for the seventeenth year, eleven per " cent; for the eighteenth year, thirteen per cent; for " the nineteenth year, fifteen per cent; and for the " twentieth year, a percentage sufficient to pay off said " bonds. The Secretary of the Board must compute ' and enter in a separate column of the assessment book " the respective sums in dollars and cents to be paid as " an assessment on the property therein enumerated. " When collected the assessment shall be paid into the " district Treasury, and shall constitute a special fund " to be called the 'Bond Fund of (naming the district) " Irrigation District.'

" SEC. 23. The assessment upon real property is a " lien against the property assessed, from and after the " first Monday in March for any year; and such lien is " not removed until the assessments are paid or the " property sold for the payment thereof.

" SEC. 24. On or before the first day of November, " the Secretary must deliver the assessment book to " the Collector of the district, who shall, within twenty " days, publish a notice in a newspaper published in " each of the counties comprising the district, if there " be lands situated in more than one county in such " district, that said assessments are due and payable " and will become delinquent at six o'clock P. M. on the

" last Monday of December next thereafter; and that " unless paid prior thereto, five per cent will be added " to the amount thereof, and also the time and place " at which payment of assessments may be made. The " notice shall also specify a time and place within each " election precinct of the district, when and where the " Collector will attend to receive payment of assess- " ments, and shall be published for fifteen days, and a " printed copy of said notice shall be posted for the " same time in some public place in each precinct. " The Collector must attend at the time and place " specified in the notice, to receive assessments, which " must be paid in gold and silver coin; he must mark " the date of payment of any assessment in the assess- " ment book opposite the name of the person paying, " and give a receipt to such person, specifying the " amount of the assessment and the amount paid, with " a description of the property assessed. On the thirty- " first day of December of each year, all unpaid assess- " ments are delinquent, and thereafter the Collector " must collect thereon, for the use of the district, an " addition of five per cent.

" SEC. 25. On or before the first day of February, " the Collector must publish the delinquent list, which " must contain the names of the persons and a descrip- " tion of the property delinquent, and the amount of the " assessments and costs due opposite each name and " description. He must append to and publish with " the delinquent list a notice, that unless the assess-

"ments delinquent, together with costs and per-
"centage, are paid, the real property upon which such
"assessments are a lien will be sold at public auction.
"The publication must be made once a week for three
"successive weeks, in a newspaper published in each of
"the counties comprised in the district. The publica-
"tion must designate the time and place of sale. The
"time of sale must not be less than twenty-one
"nor more than twenty-eight days from the first pub-
"lication, and the place must be at some point desig-
"nated by the Collector.

"SEC. 26. The Collector must collect, in addition to
"the assessments due on the delinquent list and five
"per cent added, fifty cents on each lot, piece, or tract
"of land separately assessed, one-half of which must
"go to the district and the other to the Collector for
"preparing the list. On the day fixed for the sale, or
"some subsequent day to which he may have post-
"poned it, of which he must give notice, the Collector,
"between the hours of ten o'clock A. M. and three
"o'clock P. M., must commence the sale of the prop-
"erty advertised, commencing at the head of the list
"and continuing alphabetically, or in the numerical
"order of the lots or blocks, until completed. He may
"postpone the day of commencing the sales, or the
"sale from day to day, but the sale must be completed
"within three weeks from the day first fixed.

"SEC. 27. The owner or person in possession of
"any real estate offered for sale for assessments due

" thereon may designate in writing to the Collector " prior to the sale, what portion of the property he " wishes sold, if less than the whole; but if the owner " or possessor does not, then the collector may desig- " nate it, and the person who will take the least quan- " tity of the land, or in case an undivided interest is " assessed, then the smallest portion of the interest, " and pay the assessments and costs due, including two " dollars to the Collector for the duplicate certificate of " sale, is the purchaser. If the purchaser does not " pay the assessments and costs before ten o'clock A. " M. the following day, the property, on next sale day, " before the regular sale, must be resold for the assess- " ments and costs. After receiving the amount of " assessments and costs, the Collector must make out " in duplicate a certificate, dated on the day of sale, " stating (when known) the name of the person " assessed, a description of the land sold, the amount " paid therefor, that it was sold for assessments, giv- " ing the amount and the year of the assessment, and " specifying the time when the purchaser will be en- " titled to a deed. The certificate must be signed by " the Collector, and one copy delivered to the pur- " chaser, and the other filed in the office of the County " Recorder of the county in which the land sold is " situated.

" SEC. 28. The Collector, before delivering any cer- " tificate, must in a book enter a description of the " land sold, corresponding with the description in the

" certificate, the date of the sale, purchasers' names, " and amount paid, regularly number the description " on the margin of the book and put a corresponding " number on each certificate. Such book must be " open to public inspection, without fee, during office " hours, when not in actual use. On filing the cer- " tificate with such County Recorder the lien of the " assessments vests in the purchaser, and is only di- " vested by the payment to him, or to the Collector for " his use, of the purchase money and two per cent per " month from the day of sale until redemption.

" SEC. 29. A redemption of the property sold may " be made by the owner, or any party in interest, " within twelve months from the date of purchase. " Redemption must be made in gold or silver coin, as " provided for the collection of State and county taxes, " and when made to the Collector he must credit the " amount paid to the person named in the certificate, " and pay it, on demand, to the person or his as- " signees. In each report the Collector makes to the " Board of Directors, he must name the person en- " titled to redemption money, and the amount due to " each. On receiving the certificate of sale, the " County Recorder must file it and make an entry in " a book similar to that required of the Collector. " On the presentation of the receipt of the person " named in the certificate, or of the Collector, for his " use, of the total amount of the redemption money, " the Recorder must mark the word 'Redeemed,' the

" date, and by whom redeemed, on the certificate and " on the margin of the book where the entry of the " certificate is made. If the property is not redeemed " within twelve months from the sale, the Collector, or " his successor in office, must make to the purchaser, or " his assignee, a deed of the property, reciting in the " deed substantially the matters contained in the cer- " tificate, and that no person redeemed the property " during the time allowed by law for its redemption. " The Collector shall receive from the purchaser, for " the use of the district, two dollars for making such " deed.

" SEC. 30. The matter recited in the certificate of " sale must be recited in the deed, and such deed duly " acknowledged or proved is prima facie evidence that:

" *First*—The property was assessed as required by " law.

" *Second*—The property was equalized as required by " law.

" *Third*—That the assessments were levied in ac- " cordance with law.

" *Fourth*—The assessments were not paid.

" *Fifth*—At a proper time and place the property " was sold as prescribed by law, and by the proper " officer.

" *Sixth*—The property was not redeemed.

" *Seventh*.—The person who executed the deed was " the proper officer.

" Such deed duly acknowledged or proved is (except

" as against actual fraud) conclusive evidence of the " regularity of all the proceedings from the assessment " by the Assessor, inclusive, up to the execution of " the deed. The deed conveys to the grantee the abso- " lute title to the lands described therein free of all " incumbrances, except when the land is owned by " the United States or this State, in which case it is " prima facie evidence of the right of possession.

" SEC. 31. The assessment book or delinquent list, " or a copy thereof, certified by the Collector, showing " unpaid assessments against any person or property, " is prima facie evidence of the assessment, the prop- " erty assessed, the delinquency, the amount of assess- " ments due and unpaid, and that all the forms of the " law in relation to the assessment and levy of such " assessments have been complied with.

" SEC. 32. When land is sold for assessments cor- " rectly imposed, as the property of a particular person, " no misnomer of the owner or supposed owner, or " other mistake relating to the ownership thereof, " affects the sale or renders it void or voidable.

" SEC. 33. On the first Monday in each month the " Collector must settle with the Secretary of the Board " for all moneys collected for assessments, and pay the " same over to the Treasurer; and within six days " thereafter he must deliver to and file in the office of " the Secretary a statement under oath showing:

" *First*—An account of all his transactions and re- " ceipts since his last settlement.

" *Second*—That all money collected by him as Col-
" lector has been paid.

" The Collector shall also file in the office of the Sec-
" retary on said first Monday in each month, the re-
" ceipt of the Treasurer for the money so paid.

" SEC. 34. Upon the presentation of the coupons due
" to the Treasurer, he shall pay the same from said
" Bond Fund. Whenever after ten years from the
" issuance of said bonds, said fund shall amount to the
" sum of ten thousand dollars, the Board of Directors
" may direct the Treasurer to pay such an amount of
" said bonds not due as the money in said fund will
" redeem, at the lowest value at which they may be
" offered for liquidation, after advertising for at least
" four weeks in some daily newspaper in each of the
" cities hereinbefore named, and in any other news-
" paper which said Board may deem advisable, for
" sealed proposals for the redemption of said bonds.
" Said proposals shall be opened by the Board in open
" meeting, at a time to be named in the notice, and the
" lowest bid for said bonds must be accepted; *provided*,
" that no bond shall be redeemed at a rate above par.
" In case the bids are equal, the lowest numbered bond
" shall have the preference. In case none of the hold-
" ers of said bonds shall desire to have the same re-
" deemed, as herein provided for, said money shall be in-
" vested by the Treasurer, under the direction of the
" Board, in United States gold-bearing bonds, or the
" bonds of the State, which shall be kept in said 'Bond

" 'Fund,' and may be used to redeem said district bonds " whenever the holders thereof may desire.

" SEC. 35. After adopting a plan of said canal or " canals, storage, reservoirs, and works, the Board of " Directors shall give notice by publication thereof not " less than twenty days in one newspaper published in " each of the counties composing the district, provided " a newpaper is published therein, and in such other " newspapers as they may deem advisable, calling for " bids for the construction of said work, or of any por- " tion thereof; if less than the whole work is advertised, " then the portion so advertised must be particularly " described in such notice; said notice shall set " forth that plans and specifications can be seen at " the office of the Board, and that the Board will receive " sealed proposals therefor, and that the contract will be " let to the lowest responsible bidder, stating the time " and place for opening said proposals, which at the " time and place appointed shall be opened in public, " and as soon as convenient thereafter the Board shall " let said work, either in portions or as a whole, to the " lowest responsible bidder, or they may reject any or " all bids and readvertise for proposals, or may proceed " to construct the work under their own superintend- " ence with the labor of the residents of the district. " Contracts for the purchase of material shall be " awarded to the lowest responsible bidder. Any per- " son or persons to whom a contract may be awarded " shall enter into a bond, with good and sufficient sur-

" eties, to be approved by the Board, payable to said " district for its use, for double the amount of the con- " tract price, conditioned for the faithful performance " of said contract. The work shall be done under the " direction and to the satisfaction of the Engineer, and " be approved by the Board.

" SEC. 36. No claim shall be paid by the Treasurer " until allowed by the Board, and only upon a warrant " signed by the President, and countersigned by the Secre- " tary; *provided*, that the Board may draw from time to " time from the Construction Fund and deposit in the " County Treasury of the county where the office of " the Board is situated, any sum in excess of the sum " of twenty-five thousand dollars. The County Treas- " urer of said county is hereby authorized and required " to receive and receipt for the same, and place the " same to the credit of said district, and he shall be " responsible upon his official bond for the safe keeping " and disbursement of the same, as in this Act provided. " He shall pay out the same, or any portion thereof, to " the Treasurer of the district only, and only upon the " order of the Board, signed by the President and at- " tested by the Secretary. The said County Treasurer " shall report in writing, on the second Monday in " each month, the amount of money in the County " Treasury, the amount of receipts for the month pre- " ceding, and the amount or amounts paid out; said " report shall be verified and filed with the Secretary of " the Board. The District Treasurer shall also report

" to the Board, in writing, on the first Monday in each " month, the amount of money in the District Treasury, " the amount of receipts for the month preceding, and " the amount and items of expenditures, and said re- " port shall be verified and filed with the Secretary of " the Board.

" SEC. 37. The cost and expense of purchasing and " acquiring property and constructing the works and " improvements herein provided for, shall be wholly " paid out of the Construction Fund. For the purpose " of defraying the expenses of the organization of the " district, and of the care, operation, management, " repair, and improvement of such portions of said " canal and works as are completed and in use, includ- " ing salaries of officers and employes, the Board may " either fix rates of tolls and charges, and collect the same " from all persons using said canal for irrigation and " other purposes, or they may provide for the payment " of said expenditures by a levy of assessments therefor, " or by both said tolls and assessments; if by the latter " method, such levy shall be made on the completion " and equalization of the assessment roll, and the Board " shall have the same powers and functions for the " purposes of said levy as are now possessed by Boards " of Supervisors in this State. The procedure for the " collection of assessments by such levy shall in all " respects conform to the provisions of this Act relat- " ing to the payment of principal and interest of bonds " herein provided for.

"SEC. 38. The Board of Directors shall have "power to construct the said works across any stream "of water, watercourse, street, avenue, highway, rail- "way, canal ditch, or flume which the route of said "canal or canals may intersect or cross, in such man- "ner as to afford security for life and property; but "said Board shall restore the same, when so crossed or "intersected, to its former state as near as may be, or "in a sufficient manner not to have impaired unneces- "sarily its usefulness; and every company whose rail- "road shall be intersected or crossed by said works, "shall unite with said Board in forming said intersec- "tions and crossings, and grant the privileges afore- "said; and if such railroad company and said Board or "the owners and controllers of the said property, thing, "or franchise so to be crossed, cannot agree upon the "amount to be paid therefor, or the points or the man- "ner of said crossings or intersections, the same shall "be ascertained and determined in all respects as here- "in provided in respect to the taking of land. The "right of way is hereby given, dedicated, and set apart, "to locate, construct, and maintain said works over and "through any of the lands which are now, or may be "the property of this State; and also there is given, "dedicated, and set apart, for the uses and purposes "aforesaid, all waters and water rights belonging to "this State within the district.

"SEC. 39. The Board of Directors shall each receive "four dollars per day, and mileage at the rate of twenty

" cents per mile, in attending meetings, and actual and " necessary expenses paid while engaged in official " business under the order of the Board. The Board " shall fix the compensation to be paid to the other " officers named in the Act, to be paid out of the Treas- " ury of the district; *provided*, that said Board shall, " upon the petition of at least fifty, or a majority of the " freeholders within such district therefor, submit to " the electors at any general election a schedule of sal- " aries and fees to be paid hereunder. Such petition " must be presented to the Board twenty days prior to " a general election, and the result of such election " shall be determined and declared in all respects as " other elections are determined and declared under " this Act.

" SEC. 40. No Director or any other officer named " in this Act shall in any manner be interested, directly " or indirectly, in any contract awarded or to be " awarded by the Board, or in the profits to be derived " therefrom; and for any violation of this provision, " such officer shall be deemed guilty of a misdemeanor, " and such conviction shall work a forfeiture of his " office, and he shall be punished by a fine not exceed- " ing five hundred dollars, or by imprisonment in the " county jail not exceeding six months, or by both such " fine and imprisonment.

" SEC. 41. The Board of Directors may, at any time, " when in their judgment it may be advisable, call a " special election, and submit to the qualified electors

" of the district, the question, whether or not a special " assessment shall be levied for the purpose of raising " money to be applied to any of the purposes provided " in this Act. Such election must be called upon the " notice prescribed, and the same shall be held, and the " result thereon determined and declared in all respects " in conformity with the provisions of section fifteen of " this Act. The notice must specify the amount of " money proposed to be raised, and the purpose for " which it is intended to be used. At such elections " the ballots shall contain the words, 'Assessment— " 'Yes,' or 'Assessment—No.' If two thirds of the " votes cast are 'Assessment—Yes,' the Board shall, at " the time of the annual levy hereunder, levy an assess- " ment sufficient to raise the amount voted. The rate " of assessment shall be ascertained by deducting fifteen " per cent for anticipated delinquencies from the aggre- " gate assessed value of the property in the district, as " it appears on the assessment roll for the current year, " and then dividing the sum voted by the remainder of " such aggregate assessed value. The assessments so " levied shall be computed and entered on the assess- " ment roll by the Secretary of the Board, and collected " at the same time and in the same manner as other " assessments provided for herein; and when collected " shall be paid into the District Treasury for the pur- " poses specified in the notice of such special election.

" SEC. 42. The Board of Directors or other officers " of the district, shall have no power to incur any debt

" or liability whatever, either by issuing bonds, or " otherwise, in excess of the express provisions of this " Act, and any debt or liability incurred, in excess of " such express provisions, shall be and remain abso- " lutely void.

" SEC. 43. In case the volume of water in any stream " or river shall not be sufficient to supply the continual " wants of the entire country through which it passes, " and susceptible of irrigation therefrom, then it shall " be the duty of the Water Commissioners, constituted " as hereinafter provided, to apportion, in a just and equit- " able proportion, a certain amount of said water upon " certain or alternate weekly days to different localities, " as they may, in their judgment, think best for the in- " terest of all parties concerned, and with due regard to " the legal and equitable rights of all. Said Water " Commissioners shall consist of the Chairman of the " Board of Directors of each of the districts affected.

" SEC. 44. It shall be the duty of the Board of " Directors to keep the water flowing through the " ditches under their control to the full capacity of " such ditches in times of high water.

" SEC. 45. Navigation shall never in anywise be im- " paired by the operation of this Act, nor shall any vested " interest in or to any mining water rights or ditches, or " in or to any water or water rights, or reservoirs or dams, " now used by the owners or possessors thereof, in con- " nection with any mining industry, or by persons " purchasing or renting the use thereof, or in or to any

" other property now used directly or indirectly in car-
" rying on or promoting the mining industry, ever be
" affected by or taken under its provisions, save and
" except that rights of way may be acquired over the
" same.

" SEC. 46. None of the provisions of this Act shall
" be construed as repealing or in anywise modifying
" the provisions of any other Act relating to the subject
" of irrigation or Water Commissioners. Nothing
" herein contained shall be deemed to authorize any
" person or persons to divert the waters of any river,
" creek, stream, canal, or ditch, from its channel, to the
" detriment of any person or persons having any in-
" terest in such river, creek, stream, canal, or ditch, or
" the waters therein, unless previous compensation be
" ascertained and paid therefor, under the laws of this
" State authorizing the taking of private property for
" public uses.

" SEC. 47. This Act shall take effect immediately."

ACT OF FEB. 16, 1889, Cal. Stats. 1889
(pp. 21-25)

" CHAPTER XXI.

" *An Act amendatory of and supplemental to an Act en-*
" *titled 'An Act to provide for the organization and*
" *'government of irrigation districts, and to provide*
" *'for the acquisition of water and other property,*
" *'and for the distribution of water thereby for*
" *'irrigation purposes,' approved March seventh,*
" *one thousand eight hundred and eighty-seven, pro-*
" *viding for the exclusion of certain lands within*
" *any such district.*

" [Approved February 16, 1889.]

" *The People of the State of California, represented in*
" *Senate and Assembly, do enact as follows:*

" SECTION 1. The boundaries of any irrigation dis-
" trict, now or hereafter organized under the provisions
" of an Act entitled 'An Act to provide for the organiz-
" 'ation and government of irrigation districts, and to
" 'provide for the acquisition of water and other pro-
" 'perty, and for the distribution of water thereby for
" 'irrigation purposes,' approved March seventh, one
" 'thousand eight hundred and eighty-seven, may be
" changed, and tracts of land which were included
" within the boundaries of such district, at or after its
" organization under the provisions of said Act, may be
" excluded therefrom, in the manner herein prescribed;
" but neither such change of the boundaries of the dis-
" trict, nor such exclusion of lands from the district,

" shall impair or affect its organization, or its rights in " or to property, or any of its rights or privileges of " whatever kind or nature; nor shall it affect, impair, " or discharge any contract, obligation, lien, or charge " for or upon which it was or might become liable or " chargeable had such change of its boundaries not " been made, or had not any land been excluded from " the district.

" SEC. 2. The owner or owners in fee of one or " more tracts of land, which constitute a portion of an " irrigation district, may file with the Board of Direc- " tors of the district a petition, praying that such " tracts, and any other tracts contiguous thereto, may " be excluded and taken from said district. The petition " shall describe the boundaries of the land which the " petitioners desire to have excluded from the district, " and also the lands of each of such petitioners, which " are included within such boundaries; but the descrip- " tion of such lands need not be more particular or cer- " tain than is required when the lands are entered in " the assessment book by the County Assessor. Such " petition must be acknowledged in the same manner " and form as is required in case of a conveyance of " land, and the acknowledgment shall have the same " force and effect as evidence as the acknowledgment of " such conveyance.

" SEC. 3. The Secretary of the Board of Directors " shall cause a notice of the filing of such petition to " be published for at least two weeks in some news-

" paper published in the county where the office of the " Board of Directors is situated, and if any portion of " such territory to be excluded lie within another " county or counties, then said notice shall be so pub- " lished in a newspaper published within each of said " counties; or if no newspaper be published therein, " then by posting such notice for the same time in at " least three public places in said district, and, in case " of the posting of said notices, one of said notices must " be so posted on the lands proposed to be excluded. " The notice shall state the filing of such petition; the " names of the petitioners; a description of the lands " mentioned in said petition, and the prayer of said " petition; and it shall notify all persons interested in " or that may be affected by such change of the bound- " aries of the district, to appear at the office of said " Board at a time named in said notice, and show cause " in writing, if any they have, why the change of the " boundaries of said district, as proposed in said peti- " tion, should not be made. The time to be specified " in the notice at which they shall be required to show " cause shall be the regular meeting of the Board next " after the expiration of the time for the publication of " the notice.

" SEC. 4. The Board of Directors, at the time and " place mentioned in the notice, or at the time or times " to which the hearing of said petition may be ad- " journed, shall proceed to hear the petition and all " objections thereto presented in writing by any person

" showing cause as aforesaid why the prayer of said " petition should not be granted. The failure of any " person interested in said district to show cause in " writing why the tract or tracts of land mentioned in " said petition should not be excluded from said dis- " trict, shall be deemed and taken as an assent by him " to the exclusion of such tract or tracts of land, or any " part thereof, from said district; and the filing of such " petition with such Board, as aforesaid, shall be deemed " and taken as an assent by each and all of such " petitioners to the exclusion from such district of the " lands mentioned in the petition, or any part thereof.

" SEC. 5. The Board of Directors, if they deem it " not for the best interest of the district that the lands " mentioned in the petition, or some portion thereof, " should be excluded from said district, shall order that " said petition be denied; but if they deem it for the " best interests of the district that the lands mentioned " in the petition, or some portion thereof, be excluded " from the district, and if no person interested in the " district show cause in writing why the said lands, or " some portion thereof, should not be excluded from " the district, or if, having shown cause, withdraws the " same, and also, if there be no outstanding bonds of " the district, then the Board may order that the lands " mentioned in the petition, or some defined portion " thereof, be excluded from the district.

" SEC. 6. If there be outstanding bonds of the dis- " trict, then the Board may adopt a resolution to the

" effect that the Board deems it to the best interest of " the district that the lands mentioned in the petition, " or some portion thereof, should be excluded from the " district. The resolution shall describe such lands so " that the boundaries thereof can readily be traced. " The holders of such outstanding bonds may give " their assent in writing to the effect that they severally " consent that the Board may make an order by which " the lands mentioned in the resolution may be ex- " cluded from the district. The assent must be " acknowledged by the several holders of such bonds " in the same manner and form as is required in case " of a conveyance of land, and the acknowledgment " shall have the same force and effect as evidence as " the acknowledgment of such conveyance. The assent " shall be filed with the Board and must be recorded in " the minutes of the Board; and said minutes, or a cer- " tified copy thereof, shall be admissible in evidence " with the same effect as the said assent; but if such " assent be not filed, the Board shall deny and dismiss " said petition.

" SEC. 7. If the assent aforesaid of the holders of " said bonds be filed and entered of record as aforesaid, " and if there be objections presented by any person " showing cause as aforesaid, which have not been " withdrawn, then the Board may order an election to " be held in said district, to determine whether an order " shall be made excluding said land from the district " as mentioned in said resolution. The notice of such

" election shall describe the boundary of all lands " which it is proposed to exclude, and such notice shall " be published for at least two weeks prior to such " election in a newspaper published within the county " where the office of the Board of Directors is situated; " and if any portion of such territory to be excluded lie " within another county or counties, then said notice " shall be so published in a newspaper published within " each of such counties. Such notice shall require the " electors to cast ballots which shall contain the words " 'For Exclusion,' or 'Against Exclusion,' or words " equivalent thereto. Such election shall be conducted " in accordance with the general election laws of the " State; *provided*, that no particular form of ballot shall " be required.

" SEC. 8. If at such election a majority of all the " votes cast shall be against the exclusion of said lands " from the district, the Board shall deny and dismiss " said petition and proceed no further in said matter; " but if a majority of such votes be in favor of the ex- " clusion of said lands from the district, the Board " shall thereupon order that the said lands mentioned " in said resolution be excluded from the district. The " said order shall describe the boundaries of the dis- " trict, should the exclusion of the said lands from said " district change the boundaries of the district; and for " that purpose the Board may cause a survey to be " made of such portions of the boundaries as the Board " may deem necessary.

"SEC. 9. Upon the entry in the minutes of the "Board of any of the orders hereinbefore mentioned, a "copy thereof, certified by the President and the "Secretary of the Board, shall be filed for record in the "Recorder's office of each county within which are "situated any of the lands of the district, and there- "upon said district shall be and remain an irrigation "district as fully, to every intent and purpose, as it "would be had no change been made in the boundaries "of the district, or had the lands excluded therefrom "never constituted a portion of the district.

"SEC. 10. If the lands excluded from any district "under this Act shall embrace the greater portion of "any division or divisions of such district, then the "office of Director for such division or divisions shall "become and be vacant at the expiration of ten days "from the final order of the Board, under section eight "of this Act, excluding said lands, and such vacancy "or vacancies shall be filled by appointment by the "Board of Supervisors of the county where the office of "such Board is situated from the district at large. A "director, appointed as above provided, shall hold his "office until the next regular election for said district, "and until his successor is elected and qualified.

"SEC. 11. At least thirty days before the next "general election of such district, the Board of Direc- "tors thereof shall make an order dividing said district "into five divisions, as nearly equal in size as may be "practicable, which shall be numbered first, second,

"third, fourth, and fifth, and one Director shall be "elected by each division. For the purposes of elec- "tions in such district, the said Board of Directors "must establish a convenient number of election pre- "cincts, and define the boundaries thereof, which said "precincts may be changed from time to time, as the "Board of Directors may deem necessary.

"SEC. 12. A guardian, an executor, or an admin- "istrator of an estate, who is appointed as such under "the laws of this State, and who, as such guardian, ex- "ecutor, or administrator, is entitled to the possession "of the lands belonging to the estate which he repre- "sents, may, on behalf of his ward or the estate which "he represents, upon being thereto properly authorized "by the proper Court, sign and acknowledge the peti- "tion in this Act mentioned, and may show cause, as "in this Act provided, why the boundaries of the dis- "trict should not be changed.

"SEC. 13. In case of the exclusion of any lands "under the provisions of this Act, there shall be re- "funded to any and all persons who have paid any "assessment or assessments to such district, or any "lands so excluded, any sum or sums so paid. Such "payments shall be made in the same manner as other "claims against such district, and from such fund or "funds as the Board of Directors may designate.

"SEC. 14. This Act shall take effect from and after "its passage."

ACT OF MARCH 16, 1889, Cal. Statz., 1889.
(pp. 212-213)

" CHAPTER CLXXVIII.

" *An Act supplemental to an Act entitled, 'An Act to*
" *'provide for the organization and government of irri-*
" *'gation districts, and to provide for the acquisition*
" *'of water and other property, and for the distribu-*
" *'tion of water thereby for irrigation purposes,' ap-*
" *proved March 7, 1887, and to provide for the exam-*
" *ination, approval, and confirmation of proceedings*
" *for the issue and sale of bonds issued under the pro-*
" *visions of said Act.*

" [Approved March 16, 1889.]

" *The People of the State of California, represented in*
" *Senate and Assembly, do enact as follows:*

" SECTION 1. The Board of Directors of an irriga-
" tion district, now or hereafter organized under the pro-
" visions of the Act entitled 'An Act to provide for the
" 'organization and government of irrigation districts,
" 'and to provide for the acquisition of water and other
" 'property, and for the distribution of water thereby
" 'for irrigation purposes,' approved March seventh,
" eighteen hundred and eighty-seven, may commence a
" special proceeding in and by which the proceedings
" of said Board and of said district, providing for and
" authorizing the issue and sale of the bonds of said
" district, whether said bonds or any of them have or
" have not then been sold, may be judicially examined,
" approved, and confirmed.

"SEC. 2. The Board of Directors of the irrigation "district shall file in the Superior Court of the county "in which the lands of the district, or some portion "thereof are situated, a petition praying, in effect, that "the proceedings aforesaid may be examined, approved, "and confirmed by the Court. The petition shall state "the facts showing the proceedings had for the issue "and sale of said bonds; and shall state generally that "the irrigation district was duly organized, and that "the first Board of Directors was duly elected; but the "petition need not state the facts showing such organ- "ization of the district, or the election of said first "Board of Directors.

"SEC. 3. The Court shall fix the time for the hear- "ing of said petition, and shall order the Clerk of the "Court to give and publish a notice of the filing of "said petition. The notice shall be given and pub- "lished in the same manner and for the same length of "time, that a notice of a special election provided for "by said Act to determine whether the bonds of said "district shall be issued is required to be given and "published. The notice shall state the time and place "fixed for the hearing of the petition, and the prayer "of the petition, and that any person interested in the "organization of said district, or in the proceedings for "the issue or sale of said bonds, may, on or before the "day fixed for the hearing of said petition, demur to or "answer said petition. The petition may be referred "to and described in said notice as the petition of the

"Board of Directors of ——— Irrigation District (giv-
"ing its name) praying that the proceedings for the
"issue and sale of the bonds of said district may be ex-
"amined, approved, and confirmed by said Court.

"SEC. 4. Any person interested in said district, or
"in the issue or sale of said bonds, may demur to or
"answer said petition. The provisions of the Code of
"Civil Procedure respecting the demurrer, and the
"answer to a verified complaint, shall be applicable to a
"demurrer and answer to said petition. The persons
"so demurring to or answering said petition shall be
"the defendants to said special proceeding, and the Board
"of Directors shall be the plaintiff. Every material
"statement of the petition not specifically controverted
"by the answer, must, for the purposes of said special
"proceeding, be taken as true; and each person failing
"to answer the petition shall be deemed to admit as
"true all the material statements of the petition. The
"rules of pleading and practice, provided by the Code
"of Civil Procedure, which are not inconsistent with
"the provisions of this Act, are applicable to the
"special proceeding herein provided for. A motion for
"a new trial must be made upon the minutes of the
"Court. The order granting a new trial must specify
"the issues to be re-examined on such new trial, and
"the findings of the Court upon the other issues shall
"not be affected by such order granting a new trial.

"SEC. 5. Upon the hearing of such special proceed-
"ings, the Court shall have power and jurisdiction to

" examine and determine the legality and validity of,
" and approve and confirm, each and all of the proceed-
" ings for the organization of said district under the
" provisions of the said Act, from and including the
" petition for the organization of the district, and all
" other proceedings which may affect the legality or
" validity of said bonds, and the order for the sale, and
" the sale thereof. The Court, in inquiring into the
" regularity, legality, or correctness of said proceedings,
" must disregard any error, irregularity or omission
" which does not affect the substantial rights of the
" parties to said special proceedings; and it may ap-
" prove and confirm such proceedings in part, and dis-
" approve and declare illegal or invalid other and sub-
" sequent parts of the proceedings. The Court shall
" find and determine whether the notice of the filing of
" said petition has been duly given and published, for
" the time and in the manner in this Act prescribed.
" The costs of the special proceedings may be allowed
" and apportioned between all the parties, in the dis-
" cretion of the Court.

" SEC. 6. An appeal from an order granting or re-
" fusing a new trial, or from the judgment, must be
" taken by the party aggrieved within ten days after
" the entry of said order or said judgment.

" SEC. 7. This Act shall take effect and be in force
" from and after its passage."

ACT OF MARCH 20, 1891, Cal. Statz., 1891.

(pp. 142-147)

"CHAPTER CXXVII.

"*An Act to amend an Act entitled 'An Act to provide "'for the organization and government of irrigation "'districts, and to provide for the acquisition of water "'and other property, and for the distribution of "'water thereby for irrigation purposes,' approved "March 7, 1887, by amending sections one, two, "three, four, eleven, twelve, thirty-five, and forty-two "thereof, relating to irrigation districts.*

"[Approved March 20, 1891.]

"*The People of the State of California, represented in "Senate and Assembly, do enact as follows:*

"SECTION 1. Section 1 of said Act is hereby " amended to read as follows:

"Section 1. Whenever fifty, or a majority of the " holders of title, or evidence of title, to lands " susceptible of one mode of irrigation from a " common source, and by the same system of works, " desire to provide for the irrigation of the same, they " may propose the organization of an irrigation dis- " trict, under the provisions of this Act, and when so " organized, such district shall have the powers con- " ferred, or that may hereafter be conferred, by law " upon such irrigation districts. The equalized county " assessment roll next preceding the presentation of a " petition for the organization of an irrigation district,

" under the provisions of this Act, shall be sufficient " evidence of title for the purposes of this Act.

"SEC. 2. Section two of said Act is hereby amended " to read as follows:

"Section 2. A petition shall first be presented to " the Board of Supervisors of the county in which the " lands, or the greatest portion thereof, is situated, " signed by the required number of holders of title, or " evidence of title, of such proposed district, evidenced " as above provided, which petition shall set forth and " particularly describe the proposed boundaries of such " district, and shall pray that the same may be organ- " ized under the provisions of this Act. The petition- " ers must accompany the petition with a good and " sufficient bond, to be approved by the said Board of " Supervisors, in double the amount of the probable " cost of organizing such district, conditioned that " the bondsmen will pay all the said costs in case said " organization shall not be effected. Such petition " shall be presented at a regular meeting of the said " Board, and shall be published for at least two weeks " before the time at which the same is to be presented, " in some newspaper printed and published in the " county where said petition is presented, together " with a notice stating the time of the meeting at " which the same will be presented; and if any por- " tion of such proposed district lie within another " county, or counties, then said petition and notice " shall be published in a newspaper published in each

" of said counties. When such petition is presented,
" the said Board of Supervisors shall hear the same
" and may adjourn such hearing from time to time,
" not exceeding four weeks in all; and on the final
" hearing may make such changes in the proposed
" boundaries as they may find to be proper, and shall
" establish and define such boundaries; *provided*, that
" said Board shall not modify said boundaries so as to
" except from the operation of this Act any territory
" within the boundaries of the district proposed by said
" petitioners which is susceptible of irrigation by the
" same system of works applicable to the other lands
" in such proposed district; nor shall any lands which
" will not, in the judgment of the said Board, be bene-
" fited by irrigation by said system be included within
" such district; *provided*, that any person whose lands
" are susceptible of irrigation from the same source
" may, in the discretion of the Board, upon application
" of the owner to said Board, have such lands in-
" cluded in said district. Said Board shall also make
" an order dividing said district into five divisions, as
" nearly equal in size as may be practicable, which
" shall be numbered first, second, third, fourth, and
" fifth, and one Director, who shall be a freeholder in
" the division and an elector and resident in the dis-
" trict, shall be elected by each division; *provided*, that
" if a majority of the holders of title or evidence of
" title, evidenced as above provided, petition for the
" formation of a district, the Board of Supervisors may,

" if so requested in the petition, order that there may " be either three or five Directors, as said Board may " order, for such district, and that they may be elected " by the district at large. Said Board of Supervisors " shall then give notice of an election to be held in " such proposed district, for the purpose of determining " whether or not the same shall be organized under " the provisions of this Act. Such notice shall de- " scribe the boundaries so established, and shall des- " ignate a name for such proposed district, and said " notice shall be published for at least three weeks " prior to such election in a newspaper published within " said county; and if any portion of such proposed dis- " trict lie within another county or counties, then said " notice shall be published in a newspaper pub- " lished within each of said counties. Such notice " shall require the electors to cast ballots, which " shall contain the words 'Irrigation District— " 'Yes,' or 'Irrigation District—No,' or words equiva- " lent thereto, and also the names of persons to be voted " for to fill the various elective offices hereinafter pre- " scribed. No person shall be entitled to vote at any " election held under the provisions of this Act, unless " he shall possess all the qualifications required of " electors under the general election laws of this State.

"SEC. 3. Section three of said Act is hereby amended " to read as follows:

"Section 3. Such election shall be conducted as nearly " as practicable in accordance with the general laws of

" this State; *provided*, that no particular form of ballot " shall be required. The said Board of Supervisors " shall meet on the second Monday next succeeding " such election, and proceed to canvass the votes cast " thereat, and if upon such canvass it appear that at " least two-thirds of all the votes cast are 'Irrigation " District—Yes,' the said Board shall, by an order en- " tered on its minutes, declare such territory duly or- " ganized as an irrigation district, under the name and " style theretofore designated, and shall declare the " persons receiving, respectively, the highest number " of votes for such several offices to be duly elected to " such offices. And no action shall be commenced or " maintained, or defense made, affecting the validity of " the organization, unless the same shall have been " commenced or made within two years after the mak- " ing and entering of such order. Said Board shall " cause a copy of such order, duly certified, to be imme- " diately filed for record in the office of the County Re- " corder of each county in which any portion of such " lands are situated, and must also immediately forward a " copy thereof to the Clerk of the Board of Supervisors of " each of the counties in which any portion of the dis- " of trict may lie, and no Board of Supervisors of any " county including any portion of such district shall, " after the date of the organization of such district, " allow another district to be formed including any of " the lands in such district, without the consent of the " Board of Directors thereof; and from and after the

" date of such filing, the organization of such district " shall be complete, and the officers thereof shall be " entitled to enter immediately upon the duties of their " respective offices, upon qualifying in accordance with " law, and shall hold such offices, respectively, until " their successors are elected and qualified. For " the purposes of the election above provided for, the " said Board of Supervisors must establish a conven- " ient number of election precincts in said proposed " district, and define the boundaries thereof, which " said precincts may thereafter be changed by the " Board of Directors of such district. In any district " the Board of Directors thereof may, upon the presen- " tation of a petition therefor, by a majority of the " holders of title or evidence of title of said district, " evidenced as above provided, order that on and after " the next ensuing general election for the district, " there shall be either three or five Directors, as said " Board may order, and that they shall be elected by " the district at large, or by divisions, as so petitioned " and ordered; and after such order such Directors " shall be so elected.

"SEC. 4. Section 4 of said Act is hereby amended to " read as follows:

"Section 4. An election shall be held in each dis- " trict on the first Wednesday in February, eighteen " hundred and ninety-three, and on the first Wednes- " day in February in each second year thereafter, at " which an Assessor, a Collector, and a Treasurer, and

" a Board of Directors for the district shall be elected. " The person receiving the highest number of votes " for any office to be filled at such election is elected " thereto, and shall hold office from the first Tuesday " in March next after for two years, and until his suc- " cessor is elected and qualified. Within ten days " after receiving their certificate of election, hereinafter " provided for, said officers shall take and subscribe " the official oath and file the same in the office of the " Board of Directors, and execute the bond hereinafter " provided for. The Assessor shall execute an official " bond in the sum of five thousand dollars, and the " Collector an official bond in the sum of twenty thou- " sand dollars, and the District Treasurer an official " bond in the sum of fifty thousand dollars; each of " said bonds to be approved by the Board of Directors; " and each member of said Board of Directors shall " execute an official bond in the sum of five thousand " dollars, which said bonds shall be approved by the " Judge of the Superior Court of said county where " such organization was effected, and shall be recorded " in the office of the County Recorder thereof, and filed " with the Secretary of said Board. All official bonds " herein provided for shall be in the form prescribed by " law for the official bonds of county officers.

"SEC. 5. Section eleven of said Act is hereby " amended to read as follows:

"Section 11. On the first Tuesday in March next " following their election, the Board of Directors shall

" meet and organize as a Board, elect a President from " their number, and appoint a Secretary, who shall " each hold office during the pleasure of the Board. " The Board shall have the power, and it shall be " their duty, to manage and conduct the business and " affairs of the district; make and execute all necessary " contracts; employ and appoint such agents, officers, " and employes as may be required, and prescribe their " duties; establish equitable by-laws, rules and regula- " tions for the distribution and use of water among the " owners of said lands, and generally to perform all " such acts as shall be necessary to fully carry out the " purposes of this Act. The said by-laws, rules and " regulations must be printed in convenient form for " distribution in the district. And it is hereby ex- " pressly provided that all waters distributed for irri- " gation purposes shall be apportioned ratably to each " land owner upon the basis of the ratio which the last " assessment of such owner for district purposes within " said district bears to the whole sum assessed upon " the district; *provided*, that any land owner may assign " the right to the whole or any portion of the waters so " apportioned to him.

"SEC. 6. Section twelve of said Act is hereby " amended to read as follows:

"Section 12. The Board of Directors shall hold a " regular monthly meeting in their office, on the first " Tuesday in every month, and such special meetings " as may be required for the proper transaction of busi-

" ness; *provided*, that all special meetings must be " ordered by a majority of the Board. The order must " be entered of record, and five days' notice thereof must, " by the Secretary, be given to each member not join- " ing in the order. The order must specify the busi- " ness to be transacted, and none other than that spe- " cified must be transacted at such special meeting. " All meetings of the Board must be public, and three " members shall constitute a quorum for the transac- " tion of business; but on all questions requiring a " vote there shall be a concurrence of at least three " members of said Board. All records of the Board shall " be open to the inspection of any elector during busi- " ness hours. The Board and its agents and employes " shall have the right to enter upon any land to make " surveys, and may locate the necessary irrigation " works and the line for any canal or canals, and the " necessary branches for the same, on any lands which " may be deemed best for such location. Said Board " shall also have the right to acquire, either by pur- " chase or condemnation or other legal means, all " lands, and waters and water rights, and other prop- " erty necessary for the construction, use, supply, " maintenance, repair, and improvements of said canal " or canals and works, including canals and works con- " structed and being constructed by private own- " ers, lands for reservoirs for the storage of " needful waters, and all necessary appurte- " nances. In case of purchase, the bonds of the

" district hereinafter provided for may be used at their " par value in payment; and in case of condemnation " the Board shall proceed, in the name of the district, " under the provisions of title seven, of part three, of " the Code of Civil Procedure. Said Board may also " construct the necessary dams, reservoirs and works " for the collection of water for said district, and do " any and every lawful act necessary to be done that " sufficient water may be furnished to each land owner " in said district for irrigation purposes. The use of " all water required for the irrigation of the lands of " any district formed under the provisions of this Act, " together with the rights of way for canals and ditches, " sites for reservoirs, and all other property required in " fully carrying out the provisions of this Act, is hereby " declared to be a public use, subject to the regulation " and control of the State, in the manner prescribed by " law.

" SEC. 7. Section thirty-five of said Act is hereby " amended to read as follows:

"Section 35. After adopting a plan of said canal or " canals, storage reservoirs, and works, the Board of " Directors shall give notice, by publication thereof, " not less than twenty days in one newspaper " published in each of the counties composing the dis- " trict (*provided*, a newspaper is published therein), " and in such other newspapers as they may deem ad- " visable, calling for bids for the construction of such " work, or of any portion thereof; if less than the

" whole work is advertised, then the portion so adver-
" tised must be particularly described in such notice.
" Said notice shall set forth that plans and specifica-
" tions can be seen at the office of the Board, and that
" the Board will receive sealed proposals therefor, and
" that the contract will be let to the lowest responsible
" bidder, stating the time and place for opening said
" proposals, which, at the time and place appointed,
" shall be opened in public; and as soon as convenient
" thereafter the Board shall let said work, either in
" portions or as a whole, to the lowest responsible bid-
" der; or they may reject any or all bids and readvertise
" for proposals, or may proceed to construct the work
" under their own superintendence. Contracts for the
" purchase of material shall be awarded to the lowest
" responsible bidder. Any person or persons to whom
" a contract may be awarded shall enter into a bond,
" with good and sufficient sureties, to be approved by
" the Board, payable to said district for its use, for
" twenty-five per cent of the amount of the contract
" price, conditioned for the faithful performance of said
" contract. The work shall be done under the direc-
" tion and to the satisfaction of the engineer, and be
" approved by the Board.

" SEC. 8. Section forty-two of said Act is hereby
" amended to read as follows:

" Section 42. The Board of Directors, or other offi-
" cers of the district, shall have no power to incur any
" debt or liability whatever, either by issuing bonds or

" otherwise, in excess of the express provisions of this " Act; and any debt or liability incurred in excess of " such express provisions shall be and remain abso- " lutely void, except that for the purposes of organiza- " tion, or for any of the purposes of this Act, the " Board of Directors may, before the collection of the " first assessment, incur an indebtedness not exceeding " in the aggregate the sum of two thousand dollars, " and may cause warrants of the district to issue " therefor, bearing interest at seven per cent per annum.

" SEC. 9. This Act shall take effect immediately."

ACT OF MARCH 31, 1897, Cal. Stats. 1897.

(pp. 254-287)

" CHAPTER CLXXXIX.

" *An Act to provide for the organization and government* " *of irrigation districts, and to provide for the* " *acquisition or construction thereby of works for* " *the irrigation of the lands embraced within such* " *districts, and, also, to provide for the distribution* " *of water for irrigation purposes.*

"[Approved March 31, 1897.]

" *To the People of the State of California, represented* " *in Senate and Assembly, do enact as follows:*

" ORGANIZATION.

" SECTION 1. A majority in number of the holders " of title, or evidence of title, to lands susceptible of " irrigation from a common source and by the same " system of works, such holders of title, or evidence of

" title, representing a majority in value of said lands, " according to the equalized county assessment roll or " rolls for the year last preceding, may propose the " organization of an irrigation district, under the pro- " visions of this Act. Said equalized assessment roll " or rolls shall be sufficient evidence of title for the " purposes of this Act.

" SEC. 2. In order to propose the organization of an " irrigation district, a petition shall be presented to the " Board of Supervisors of the county in which the " lands within the proposed district, or the greater " portion, thereof, are situated, signed by the required " number of holders of title, or evidence of title, to " lands within such proposed district, and representing " the requisite majority in value of said lands, which " petition shall set forth the boundaries of the pro- " posed district, and shall state, generally, the source " from which said lands are proposed to be irrigated, " and the character of the works proposed to be " acquired or constructed for irrigation purposes, and " shall pray that the territory embraced within the " boundaries of the proposed district may be organ- " ized as an irrigation district under the provisions of " this Act. The petition must be accompanied with " a good and sufficient undertaking, to be approved by " said Board of Supervisors, in double the amount of " the probable cost of organizing such district, condi- " tioned that the sureties shall pay all of said costs, in " case said organization shall not be effected. Said

" petition shall be presented at a regular meeting of " said board, and shall be published for at least two " weeks before the time at which the same is to be pre- " sented, in some newspaper of general circulation " printed and published in the county where said peti- " tion is presented, together with a notice stating the " time of the meeting at which the same will be pre- " sented; and if any portion of the lands within said " proposed district lie within another county or coun- " ties, then said petition and notice shall be published, " as above provided, in a newspaper published in each " of said counties. When such petition is presented, " said Board of Supervisors shall hear the same, and " may adjourn such hearing from time to time, not " exceeding four weeks in all. And on the final hear- " ing said board shall make such changes in the pro- " posed boundaries as may be deemed advisable, and shall " define and establish such boundaries. But said board " shall not modify said boundaries so as to exclude " from such proposed district any territory which is " susceptible of irrigation from a common source and " by the same system of works applicable to the other " lands in such proposed district; nor shall any lands " which will not, in the judgment of said board, be " benefited by irrigation, by means of said system of " works, be included within such proposed district. " Any person whose lands are susceptible of irrigation " from the same source and system of works, may, " upon his application, in the discretion of said board,

" have such lands included within said proposed dis-
" trict.

"SEC. 3. Upon such hearing of said petition, the
" Board of Supervisors shall determine whether or not
" said petition complies with the requirements of sec-
" tions one and two of this Act, and for that purpose
" must hear all competent and relevant testimony
" offered in support or in opposition thereto. Such
" determination shall be entered upon the minutes of
" said Board of Supervisors.

"SEC. 4. The right of appeal from said order to the
" Superior Court of the county where said petition is
" heard is hereby given to any person interested who
" is a party to the record; provided, that if more than
" one appeal be taken they shall be consolidated and
" tried together. Such appeal shall be taken within ten
" days after the entry of such order upon the minutes
" of the Board of Supervisors. The appeal shall be
" taken and heard in the same manner as appeals from
" Justices' Courts to the Superior Court, except as
" herein otherwise provided. Upon the appeal, the
" Superior Court may make and enter its judgment
" affirming, modifying, or reversing the order appealed
" from. Within ten days thereafter the Superior
" Court must cause its remittitur to issue to said Board
" of Supervisors, and if said order of the Board of Su-
" pervisors is modified or reversed, the judgment of the
" Superior Court and its remittitur shall direct the
" Board of Supervisors what order it shall enter. Such

" remittitur shall be filed by the clerk of the Board " of Supervisors, and at the first regular meeting of " the board thereafter, it shall cause to be entered in " its minutes the order as directed by said Superior " Court. The appeal herein provided for shall be " heard and determined within thirty days from the " time of filing the notice of appeal.

"SEC. 5. If, on said final hearing, the boundaries of " the proposed district are defined and established, " said board shall make an order dividing said district " into five divisions, as nearly equal in size as may be " practicable, which shall be numbered first, second, " third, fourth, and fifth, and one director shall be " elected for each division by the electors thereof; pro- " vided, that if so requested in said petition, the board " may order that there shall be only three divisions in " said district, and that only three directors be elected, " or that they be elected for the district at large.

"ELECTION ON ORGANIZATION.

"SEC. 6. Said Board of Supervisors shall then give " notice of an election to be held in such proposed dis- " trict, for the purpose of determining whether or not " the same shall be organized under the provisions of " this Act. Such notice shall describe the boundaries " so established, and shall designate a name for the " proposed district, and said notice shall be published " for at least three weeks previous to such election, in " a newspaper published within the county in which

" the petition for the organization of the proposed dis-
" trict was presented; and if any portion of such pro-
" posed district is within another county or counties,
" then such notice shall be published for the same
" length of time in a newspaper published in each of
" said counties. Such notice shall require the electors
" to cast ballots, which shall contain the words "Irri-
" gation District—Yes," or "Irrigation District—No,"
" or words equivalent thereto, and also the names of
" persons to be voted for at said election. For the
" purposes of said election the Board of Supervisors
" must establish a convenient number of election pre-
" cincts in said proposed district, and define the boun-
" daries of the same. Such election shall be conducted
" as nearly as practicable in accordance with the gen-
" eral election laws of the State, but no particular form
" of ballot shall be required.

"SEC. 7. At such election there shall be elected a
" board of directors, and an assessor, tax collector, and
" treasurer; provided, that where a consolidation of
" officers as hereinafter provided for is deemed advis-
" able in the organization of a district, the petitioners
" may request in their petition for organization such
" consolidation, and the Board of Supervisors calling
" the election shall in its order therefor announce such
" consolidation, and then only one person shall be
" elected to fill the several offices so consolidated.

"SEC. 8. No person shall be entitled to vote at any
" election held under the provisions of this Act unless

" he possesses all the qualifications required of electors
" under the general election laws of the State.

" SEC. 9. The Board of Supervisors shall meet on
" the second Monday succeeding such election, and
" shall proceed to canvass the votes cast thereat, and if
" upon such canvass it appears that at least two-thirds
" of all the votes cast are "Irrigation District—Yes,"
" said bond shall, by an order entered on its minutes de-
" clare the territory duly organized as an irrigation dis-
" trict, under the name theretofore designated, and shall
" declare the persons receiving respectively the highest
" number of votes at said election to be duly elected.

"SEC. 10. Said board shall then cause a copy of
" such order, duly certified, to be immediately filed for
" record in the office of the County Recorder of any
" county in which any portion of the lands embraced
" in such district are situated, and must also immedi-
" ately forward a copy thereof to the clerk of the Board
" of Supervisors of each of said last mentioned counties,
" and no Board of Supervisors of any county in which
" any portion of the lands embraced in such district are
" situated shall, after the date of the organization
" thereof, allow another district to be formed including
" any portion of said lands, without the consent of the
" board of directors of the district in which they are
" situated. From and after such filing, the organiza-
" tion of such district shall be complete.

"SEC. 11. Such election on organization may be
" contested by any person owning property within the

" proposed district liable to assessment. The directors " elected at such election shall be made parties defend- " ant. Such contest shall be brought in the Superior " Court of the county where the petition for organiza- " tion is filed; provided, that if more than one contest " be pending they shall be consolidated and tried " together. The court having jurisdiction shall speedily " try such contest, and determine, upon the hearing, " whether the election was fairly conducted and in " substantial compliance with the requirements of this " Act, and enter its judgment accordingly. Such " contest must be brought within twenty days after the " canvass of the vote and declaration of the result by " the Board of Supervisors. The right of appeal is " hereby given to either party to the record within " thirty days from the entry of the judgment. The " appeal must be heard and determined by the Supreme " Court within sixty days from the time of filing the " notice of appeal.

" SEC. 12. The officers elected at the election here- " inbefore provided for shall immediately enter upon " their duties as such, upon qualifying in the manner " for such officers herein provided. Said officers shall " hold office respectively until their successors are " elected and qualified.

" DUTIES AND POWERS OF THE BOARD OF DIRECTORS.

" SEC. 13. The directors of any district created " after the passage of this Act, on the first Tuesday

" after their election, after they shall have qualified, shall " meet and classify themselves by lot into two classes, " as nearly equal in number as possible, and the term " after office of the class having the greater number shall " expire at the next general February election in this " Act provided for; and the term of office of the class " having the lesser number shall terminate at the next " general February election thereafter. After such " classification, said directors shall organize as a board, " shall elect a president from their number, and appoint " a secretary, who shall each hold office during the " pleasure of the board. The salary of the secretary " and the amount of the bond to be given by him for " the faithful performance of his duties shall be fixed " by the board of directors.

" SEC. 14. The board of directors shall hold a reg- " lar monthly meeting, in their office, on the first " Tuesday in every month, and such special meetings " as may be required for the proper transaction of " business; provided, that all special meetings must be " ordered by a majority of the board. The order must " be entered of record, and five days' notice thereof " must, by the secretary, be given to each member not " joining in the order. The order must specify the " business to be transacted, and none other than that " specified must be transacted at such special meeting. " All meetings of the board must be public, and three " members shall constitute a quorum for the transac- " tion of business; provided, however, that when the

" board consists of three members only, then in such " cases, two shall constitute a quorum for the transac- " tion of business, but on all questions requiring a " vote there shall be a concurrence of at least the num- " ber constituting a quorum. All records of the board " shall be open to public inspection during business " hours. The board of directors shall, on the first " Tuesday in January of each and every year render, " and immediately thereafter cause to be published, a " verified statement of the financial condition of the " district, showing particularly the receipts and dis- " bursements of the last preceding year, together with " the source of such receipts and purpose of such dis- " bursements. Said publication shall be made at least " once a week for two weeks, in some paper published " in the county where the office of the board of direc- " tors of such district is situated.

" SEC. 15. The board shall have the power, and it " shall be their duty, to manage and conduct the busi- " ness and affairs of the district; make and execute all " necessary contracts; employ and appoint such agents, " officers, and employees as may be required, and pre- " scribe their duties. The board and its agents and " employes shall have the right to enter upon any land " to make surveys, and may locate the necessary irri- " gation works and the line for any canal or canals, " and the necessary branches for the same, on any lands " which may be deemed best for such location. Said " board shall also have the right to acquire, either by

" purchase or condemnation, or other legal means, all " lands, and waters, and water rights, and other prop- " erty necessary for the construction, use, supply, main- " tenance, repair, and improvements of said canal or " canals and works, including canals and works con- " structed and being constructed by private owners, " lands for reservoirs for the storage of needful waters, " and all necessary appurtenances. But no purchase of " any waters, or water rights, or canals, or reservoirs, or " reservoir sites, or irrigation works, or other real prop- " erty of any nature or kind, for any price in excess of ten " thousand dollars shall be final or binding on the dis- " trict, nor shall the purchase price thereof be paid, " until a petition of a majority of the holders of title, " or evidence of title, to lands within the district, such " holders of title, or evidence of title, representing a " majority in value of said land, according to the last " equalized assessment roll of the district, shall " have been filed with the board and an order of the " board made thereon confirming such purchase. Said " board may also construct the necessary dams, reser- " voirs, and works for the collection of water for said " district, and do any and every lawful act necessary " to be done, that sufficient water may be furnished to " each land owner in said district for irrigation pur- " poses. The said board is hereby authorized and em- " powered to take conveyances or other assurances for " all property acquired by it under the provisions of " this Act, in the name of such irrigation district, to

" and for the uses and purposes herein expressed, and " to institute and maintain any and all actions and " proceedings, suits at law or in equity, necessary or " proper in order to fully carry out the provisions of " this Act or to enforce, maintain, protect, or preserve " any and all rights, privileges, and immunities cre- " ated by this Act, or acquired in pursuance thereof. " And in all courts, actions, suits, or proceedings, the said " board may sue, appear, and defend in person or by " attorneys, and in the name of such irrigation district. " It shall be the duty of said board to establish equit- " able by-laws, rules, and regulations for the distribution " and use of water among the owners of said lands, which " must be printed in convenient form for distribution " in the district. Said board shall have power gener- " ally to perform all such acts as shall be necessary to " fully carry out the purposes of this Act.

" SEC. 16. In case of condemnation proceedings " the board shall proceed, in the name of the district, " under the provisions of title seven, part three, of the " Code of Civil Procedure.

" WATER REGULATIONS.

" SEC. 17. The use of all water required for the " irrigation of the lands of any district formed under " the provisions of this Act, or the Act of which this is " supplementary or amendatory, together with the " rights of way for canals and ditches, sites for reser- " voirs, and all other property required in fully carry-

" ing out the provisions of this Act, is hereby declared " to be a public use, subject to the regulation and con- " trol of the State, in the manner prescribed by law.

"SEC. 18. It is hereby expressly provided that all " waters distributed for irrigation purposes shall be " apportioned ratably to each land owner upon the " basis of the ratio which the last assessment of such " owner for district purposes within said district bears " to the whole sum assessed upon the district; pro- " vided, that any land owner may assign the right to " the whole or any portion of the waters so apportioned " to him.

"GENERAL ELECTIONS.

"SEC. 19. An election shall be held in each irriga- " tion district on the first Wednesday in February, " eighteen hundred and ninety-nine, and on the first " Wednesday in February in each second year there- " after, at which an assessor, a collector, and a treas- " urer, and directors for the district shall be elected. " The person receiving the highest number of votes " for any office to be filled at such election shall be " elected thereto. The assessor, collector, and treas- " urer shall each hold office from the first Tuesday in " March next after, for two years, and until his suc- " cessor is elected and qualified. Within ten days after " receiving their certificates of election, hereinafter " provided for, said officers shall take and subscribe " the official oath and file the same in the office of the " board of directors, and execute the bond hereinafter

" provided for. The assessor shall execute an official
" bond in the sum of five thousand dollars, and the
" collector an official bond in the sum of twenty thousand
" dollars, and the district treasurer an official bond in the
" sum of fifty thousand dollars; each of said bonds to
" be approved by the board of directors; provided, that
" the board of directors may if it shall be deemed advis-
" able, fix the bonds of the treasurer and collector,
" respectively, to suit the conditions of the district,
" the maximum amount of the treasurer's bond not to
" exceed fifty thousand dollars, and the minimum
" amount thereof not to be less than ten thousand dol-
" lars; and the maximum amount of the collector's
" bond not to exceed twenty thousand dollars, and the
" minimum amount thereof not to be less than five
" thousand dollars. Each member of said board of
" directors shall execute an official bond in the sum of
" five thousand dollars, which said bonds shall be
" approved by the Judge of the Superior Court of said
" county where such organization was effected, and
" shall be recorded in the office of the County Recorder
" thereof, and filed with the secretary of said board. All
" official bonds herein provided for shall be in the
" form prescribed by law for the official bonds of county
" officers.

" SEC. 20. On the first Tuesday in March next fol-
" lowing their election, the directors who shall have
" been elected at the general February election, shall
" meet and organize as a board, elect a president and

" appoint a secretary, who shall each hold office during " the pleasure of the board. And the directors of dis- " tricts now organized, who shall have been elected at " the general February election of eighteen hundred " and ninety-nine, shall, on the first Tuesday in March " next thereafter, when they meet to organize, first " classify themselves by lot into two classes as nearly " equal in number as possible. And the term of office " of the class having the greater number shall be two " years; and the term of office of the lesser number " shall be four years. The full term of office of di- " rectors is hereby fixed at four years.

"SEC. 21. Fifteen days before any election held " under this Act, subsequent to the organization of " any district, the secretary of the board of directors " shall cause notices to be posted in three public places " in each election precinct, of the time and place of " holding the election, and shall also post a general " notice of the same in the office of said board, which " shall be established and kept at some fixed place, to " be determined by said board, specifying the polling " places of each precinct. Prior to the time for post- " ing the notices, the board must appoint for each pre- " cinct, from the electors thereof, one inspector and " two judges, who shall constitute a board of election " for such precinct. If the board fail to appoint a board " of election, or the members appointed do not attend at " the opening of the polls on the morning of election, " the electors of the precinct present at that hour may

" appoint the board, or supply the place of an absent " member thereof. The board of directors must, in its " order appointing the board of election, designate the " house or place within the precinct where the election " must be held.

" SEC. 22. The inspector is chairman of the election " board, and may administer all oaths required in the " progress of an election; and appoint judges and " clerks, if, during the progress of the election, any " judge or clerk cease to act. Any member of the " board of election, or any clerk thereof, may administer " and certify oaths required to be administered during " the progress of an election. The board of election " for each precinct must, before opening the polls, ap- " point two persons to act as clerks of the election. " Before opening the polls, each member of the board " and each clerk must take and subscribe an oath to " faithfully perform the duties imposed upon them by " law. Any elector of the precinct may administer and " certify such oath. The polls must be opened one " hour after sunrise on the morning of the election, " and be kept open until sunset, when the same must " be closed. The provisions of the general election " laws concerning the form of ballots to be used shall " not apply to elections held under this Act.

" SEC. 23. Voting may commence as soon as the " polls are opened, and may be continued during all " the time the polls remain opened, and shall be con- " ducted, as nearly as practicable, in accordance with

" the provisions of the general election laws of this
" state. As soon as all the votes are counted, a cer-
" tificate shall be drawn up on each of the papers con-
" taining the poll list and tallies, or attached thereto,
" stating the number of votes each one voted for has
" received, and designating the office to fill which he
" was voted for, which number shall be written in
" figures and in words at full length. Each certificate
" shall be signed by the clerk, judge, and the inspector.
" One of said certificates, with the poll list and the tally
" paper to which it is attached, shall be retained by the
" inspector, and preserved by him at least six months.
" The ballots shall be strung upon a cord or thread by
" the inspector, during the counting thereof, in the
" order in which they are entered upon the tally list by
" the clerks; and said ballots, together with the other
" of said certificates, with the poll list and tally paper
" to which it is attached, shall be sealed by the in-
" spector in the presence of the judges and clerks, and
" indorsed 'Election returns of (naming the precinct)
" precinct,' and be directed to the secretary of the
" board of directors, and shall be immediately delivered
" by the inspector, or by some other safe and respon-
" sible carrier designated by said inspector, to said
" secretary, and the ballots shall be kept unopened for
" at least six months; and if any person be of the
" opinion that the vote of any precinct has not been
" correctly counted, he may appear on the day ap-
" pointed for the board of directors to open and canvass

" the returns, and demand a recount of the vote of the " precinct that is so claimed to have been incorrectly " counted.

" SEC. 24. No list, tally paper, or certificate returned " from any election, shall be set aside or rejected for " want of form, if it can be satisfactorily understood. " The board of directors must meet at its usual place of " meeting on the first Monday after each election to " canvass the returns. If, at the time of meeting, the " returns from each precinct in the district in which the " polls were opened have been received, the board of " directors must then and there proceed to canvass the " returns; but if all the returns have not been received, " the canvass must be postponed from day to day until " all the returns have been received, or until six post- " ponements have been had. The canvass must be " made in public and by opening the returns and " estimating the vote of the district for each person " voted for, and declaring the result thereof.

" SEC. 25. The secretary of the board of directors " must, as soon as the result is declared, enter in the " records of such board a statement of such result, " which statement must show: (a) The whole number " of votes cast in the district, and in each division of " the district; (b) the names of the persons voted for; " (c) the office to fill which each person was voted for; " (d) the number of votes given in each precinct to " each of such persons; (e) the number of votes given " in each division for the office of director, and the

" number of votes given in the district for the offices of " assessor, collector, and treasurer. The board of " directors must declare elected the persons having the " highest number of votes given for each office. The " secretary must immediately make out and deliver to " such person a certificate of election, signed by him, " and authenticated with the seal of the board.

" In case of a vacancy in the office of assessor, col- " lector, or treasurer, the vacancy shall be filled by ap- " pointment of the board of directors; provided, that if " said board of directors shall neglect or refuse to make " such appointment within a period of forty days, then " the Board of Supervisors of the county wherein the " office of said board of directors is situated shall make " such appointment. In case of a vacancy in the office " of director, the vacancy shall be filled by appointment " by the Board of Supervisors of the county where the " office of such board of directors is situated, from the " division in which the vacancy occurred. An officer " appointed as above provided shall hold his office until " the next regular election for said district, and until " his successor is elected and qualified.

" SEC. 26. A director shall be a resident and free- " holder of the irrigation district, but not necessarily of " the division for which he is elected.

" SEC. 27. The board of directors may, in its dis- " cretion, consolidate any two or more of the offices of " assessor, collector, and treasurer. The order of con- " solidation must be made at least thirty days prior to

" general election of the district, and shall take effect at " the next succeeding election; provided, that the board " of directors may, at least thirty days before a general " election of the district, where the offices have been " consolidated, segregate the same, each office to be " filled at such election.

" SEC. 28. In any district the board of directors thereof " may, upon the presentation of a petition therefor, by " a majority of the holders of title, or evidence of title, " of said district, evidenced as above provided, order " that on and after the next ensuing general election " for the district, there shall be either three or five " directors, as said board may order, and they shall be " elected by the district at large, or by divisions, as so " petitioned and ordered; and after such order such " directors shall be so elected.

" TITLE TO PROPERTY.

" SEC. 29. The legal title to all property acquired " under the provisions of this Act shall immediately " and by operation of law vest in such irrigation dis- " trict, and shall be held by such district in trust for " and is hereby dedicated and set apart to the uses and " purposes set forth in this Act. And said board is " hereby authorized and empowered to hold, use, " acquire, manage, occupy, and possess said property " as herein provided.

" ISSUANCE OF BONDS.

" SEC. 30. For the purpose of constructing neces-

" sary irrigating canals and works, and acquiring the " necessary property and rights therefor, and otherwise " carrying out the provisions of this Act, the board of " directors of any such district must, as soon after such " district has been organized as may be practicable, " and also whenever thereafter the construction fund " has been exhausted by expenditures herein author- " ized therefrom and it is necessary to raise additional " money for said purposes, estimate and determine the " amount of money necessary to be raised. And there- " after said board, when petitioned by a majority of " the holders of title, or evidence of title, to lands " within the district, such holders of title, or evidence " of title, representing a majority in value of said lands, " according to the equalized assessment roll of the dis- " trict, if such has theretofore been made, and if such " has not been made, then according to the equalized " county assessment roll covering the lands of such " district, shall immediately call a special election, at " which shall be submitted to the electors of such dis- " trict, possessing the qualifications prescribed by this " Act, the question whether or not the bonds of said " district in the amount as set forth in said petition " shall be issued. Notice of such election must be given " by posting notices in three public places in each " election precinct in said district for at least twenty " days, and also by publication of such notice in some " newspaper published in the county where the office " of the board of directors of such district is required

" to be kept, once a week for at least three successive " weeks. Such notices must specify the time of hold- " ing the election, the amount of bonds proposed to " be issued; and said election must be held and the " result thereof determined and declared in all respects " as nearly as practicable in conformity with the pro- " visions of this Act governing the election of officers; " provided, that no informalities in conducting such an " election shall invalidate the same, if the election " shall have been otherwise fairly conducted. At " such election the ballots shall contain the words " 'Bonds—Yes,' or 'Bonds—No,' or words equivalent " thereto. If a majority of the votes cast are 'Bonds " —Yes,' the board of directors shall cause bonds in said " amount to be issued; if a majority of the votes cast " at any bond election are 'Bonds—No,' the result of " such election shall be so declared and entered of rec- " ord. Whenever thereafter a petition of the character " hereinbefore provided for in this section is presented " to the board it shall so declare of record in its min- " utes, and shall thereupon submit such questions to " said electors in the same manner and with like effect " as at such previous election.

" SEC. 31. All bonds issued under the provisions of " this Act shall be payable in gold coin of the United " States, in ten series, as follows, to-wit: At the expi- " ration of twenty-one years, five per cent of the whole " number of said bonds; at the expiration of twenty- " two years, six per cent; at the expiration of twenty-

" three years, seven per cent; at the expiration of
" twenty-four years, eight per cent; at the expiration
" of twenty-five years, nine per cent; at the expiration
" of twenty-six years, ten per cent; at the expiration of
" twenty-seven years, eleven per cent; at the expiration
" of twenty-eight years, thirteen per cent; at the expi-
" ration of twenty-nine years, fifteen per cent; and at
" the expiration of thirty years, sixteen per cent; that
" the several enumerated percentages being of the
" entire amount of the bond issue, but each bond must
" be made payable at a given time for its entire
" amount and not for a percentage. Said bonds shall
" bear interest at the rate of five per cent per annum,
" payable semi-annually, on the first day of January
" and July of each year. The principal and interest
" shall be payable at the place designated therein.
" Said bonds shall be each of the denomination of not
" less than one hundred dollars nor more than five
" hundred dollars; shall be negotiable in form, signed
" by the president and secretary, and the seal of the
" board of directors shall be affixed thereto. Each
" issue shall be numbered consecutively as issued, and
" the bonds of each issue shall be numbered consecu-
" tively, and bear date at the time of their issue. Cou-
" pons for the interest shall be attached to each bond,
" signed by the secretary. Said bonds shall express
" on their face that they were issued by authority of
" this Act, stating its title and date of approval, and
" shall also so state the number of the issue of which

" such bonds are a part. The secretary shall keep a " record of the bonds sold, their number, the date of " sale, the price received, and the name of the pur- " chaser.

" SEC. 32. The board may sell said bonds from time " to time in such quantities as may be necessary and most " advantageous, to raise money for the construction of " said canals and works, the acquisition of said property " and rights, and otherwise to fully carry out the ob- " jects and purposes of this Act. Before making any " sale the board shall, at a meeting, by resolution, de- " clare its intention to sell a specified amount of the " bonds, and the day and hour and place of such sale, " and shall cause such resolution to be entered in the " minutes, and notice of the sale to be given, by pub- " lication thereof at least three weeks, in some news- " paper published in the county where the office of the " board of directors is located, and in any other news- " paper, at its discretion. The notice shall state that " sealed proposals will be received by the board at their " office, for the purchase of bonds, till the day and hour " named in the resolution. At the time appointed the " board shall open the proposals, and award the pur- " chase of the bonds to the highest responsible bidder; " provided, however, that they may reject all bids. " Said board shall in no event sell any of the said " bonds for less than the par value thereof.

" SEC. 33. Said bonds, and the interest thereon, " shall be paid by revenue derived from an annual

" assessment upon the real property of the district; and " all the real property in the district shall be and re- " main liable to be assessed for such payments, as here- " inafter provided.

" ASSESSMENT FOR COMPLETION OF WORKS.

" SEC. 34. In case the money raised by the sale of " bonds issued be insufficient or in case the bonds be " unavailable for the completion of the plan of canal " and works adopted, and additional bonds be not voted, " it shall be the duty of the board of directors to pro- " vide for the completion of said plan by levy of assess- " ments therefor; provided, however, that such levy of " assessments shall not be made except first an estimate " of the amount required for such purposes has been " made by said board, and the question as to the mak- " ing of said levy submitted to a vote of the electors of " the district. Before such question is submitted the " order of submission shall be entered in the minutes " of the board, stating the amount to be levied and the " purpose therefor, and if submitted at a special elec- " tion said order shall, in addition, fix the day of " election. Notice of such election must be given by " posting notices in three public places in each election " precinct in said district for at least twenty days, and " also by publication of such notice in some newspaper " published in the county where the office of the board " of directors of such district is required to be kept, " once a week for at least three successive weeks. Such " notices must specify the time of holding the election,

" and the amount of assessment proposed to be levied. " Said election must be held and the result thereof de- " termined and declared in all respects as nearly as " practicable in conformity with the provisions of this " Act governing the election of officers; provided, that " no informalities in conducting such an election shall " invalidate the same, if the election shall have been " otherwise fairly conducted. At such election the " ballots shall contain the words 'Assessment—Yes,' or " 'Assessment—No,'' or words equivalent thereto. If " a majority of the votes cast are 'Assessment—Yes,' " the board of directors shall cause an assessment in " the amount named in the order of submission to be " levied; if a majority of the votes cast are 'Assess- " ment—No,' the result of such election shall be so " declared and entered of record.

" DUTIES OF THE ASSESSOR.

" SEC. 35. The assessor must, between the first " Monday in March and the first Monday in June, in " each year, assess all real property in the district, to " the persons who own, claim, have the possession, or " control thereof, at its full cash value. He must pre- " pare an assessment book, with appropriate headings " in which must be listed all such property within the " district, in which must be specified, in separate " columns, under the appropriate head: (a) the name " of the person to whom the property is assessed (if the " name is not known to the assessor, the property shall " be assessed to 'unknown owners'); (b) land by town-

" ship, range, section, or fractional section, and when " such land is not a congressional division or sub- " division, by metes and bounds, or other description " sufficient to identify it, giving an estimate of the " number of acres, locality, and the improvements " thereon; (c) city and town lots, naming the city or " town, and the number and block, according to the " system of numbering in such city or town, and the " improvements thereon; (d) the cash value of real " estate, other than city or town lots; (e) the cash " value of improvements on such real estate; (f) the " cash value of city and town lots; (g) the cash value " of improvements on city and town lots; (h) the cash " value of improvements on real estate assessed to " persons other than the owners of the real estate; (i) " the total value of all property assessed; (j) the total " value of all property after equalization by the board " of directors; (k) such other things as the board of " directors may require. Any property which may " have escaped the payment of any assessment for any " year, shall, in addition to the assessment for the " then current year, be assessed for such year with the " same effect and with the same penalties as are pro- " vided for such current year.

"SEC. 36. The board of directors must allow the " assessor as many deputies, to be appointed by him, " as will, in the judgment of the board, enable him to " complete the assessment within the time herein pre- " scribed. The board must fix the compensation of

"such deputies, which shall be paid out of the treasury "of the district. The compensation must not exceed "five dollars per day for each deputy, for the time "actually engaged, nor must any allowance be made "but for work done between the first Monday in March "and the first Monday in August in each year.

"SEC. 37. On or before the first Monday in August "in each year, the assessor must complete his assess- "ment book, and deliver it to the secretary of the "board, who must immediately give notice thereof, and "of the time the board of directors, acting as a board "of equalization, will meet to equalize assessments, by "publication in a newspaper published in each of the "counties comprising the district. The time fixed for "the meeting shall not be less than twenty nor more "than thirty days from the first publication of the "notice; and in the meantime the assessment book "must remain in the office of the secretary for the "inspection of all persons interested.

"EQUALIZATION OF ASSESSMENT.

"SEC. 38. Upon the day specified in the notice "required by the preceding section for the meeting, "the board of directors, which is hereby constituted a "board of equalization for that purpose, shall meet and "continue in session from time to time, as long as "may be necessary, not to exceed ten days, exclusive of "Sundays, to hear and determine such objections to "the valuation and assessment as may come before "them; and the board may change the valuation as

"may be just. The secretary of the board shall be "present during its sessions, and note all changes "made in the valuation of property, and in the names "of the persons whose property is assessed; and within "ten days after the close of the session he shall have "the total values, as finally equalized by the board, "extended into columns and added.

"LEVY OF AND COLLECTION OF TAXES.

"SEC 39. The board of directors shall then levy an "assessment sufficient to raise the annual interest on "the outstanding bonds, and in any year in which any "bonds shall fall due must increase said assessment to "an amount sufficient to raise a sum sufficient to pay "the principal of the outstanding bonds as they "mature. The secretary of the board must compute "and enter in a separate column of the assessment "book the respective sums, in dollars and cents, to be "paid as an assessment on the property therein enum-"erated. When collected, the assessment shall be "paid into the district treasury and be apportioned to "the several proper funds.

"In case of the neglect or refusal of the board of direc-"tors to cause such assessments and levies to be made "as in this Act provided, then the assessment of prop-"erty made by the County Assessor and the State "Board of Equalization shall be adopted, and shall be "the basis of assessment for the district, and the "Board of Supervisors of the county in which the office

" of the board of directors is situated shall cause an " assessment roll for said district to be prepared, " and shall make the levy required by this Act, in " the same manner and with like effect as if the same " had been made by said board of directors, and all " expenses incident thereto shall be borne by such " district. In case of the neglect or refusal of the col- " lector or treasurer of the district to perform the duties " imposed by law, then the Tax Collector and Treas- " urer of the county in which the office of the board of " directors is situated must, respectively, perform such " duties, and shall be accountable therefor upon their " official bonds as in other cases.

" SEC. 40. The assessment upon real property is " a lien against the property assessed from and after " the first Monday in March for any year, and the lien " for the bonds of any issue shall be a preferred lien to " that for any subsequent issue, and such lien is not re- " moved until the assessments are paid, or the property " sold for the payment thereof.

" SEC. 41. On or before the first day of November, " the secretary must deliver the assessment book to " the collector of the district, who shall within twenty " days publish a notice, in a newspaper published in " each county in which any portion of the district may " lie, that said assessments are due and payable, and " will become delinquent at 6 o'clock P. M. on the last Mon- " day of December next thereafter, and that unless paid " prior thereto, five per cent will be added to the

" amount thereof, and also the time and place at which " payment of assessments may be made, which notice " shall be published for the period of two weeks. The " collector must attend at the time and place specified " in the notice, to receive assessments, which must be " paid in gold and silver coin; he must mark the date " of payment of any assessment in the assessment " book, opposite the name of the person paying, and " give a receipt to such person, specifying the amount " of the assessment and the amount paid, with a de- " scription of the property assessed. On the last Mon- " day in December, at six o'clock P. M., of each year, " all unpaid assessments are delinquent, and thereafter " the collector must collect thereon, for the use of the " district, an addition of five per cent.

" PUBLICATION OF DELINQUENT NOTICE.

" SEC. 42. On or before the first day of February, " the collector must publish the delinquent list, which " must contain the names of the persons and a descrip- " tion of the property delinquent, and the amount of " the assessments and costs due opposite each name " and description. He must append to and publish " with the delinquent list a notice, that unless the " assessments delinquent, together with costs and per- " centage, are paid, the real property upon which such " assessments are a lien will be sold at public auction. " The publication must be made once a week for three " successive weeks, in a newspaper published in the " county in which the property delinquent is situated;

" provided, that if any property assessed to the same " person or corporation shall lie in more than one " county, then such publication may be made in any " county in which any portion of such property may " lie. The publication must designate the time and " place of sale. The time of sale must not be less than " twenty-one nor more than twenty-eight days from the " first publication, and the place must be at some point " designated by the collector, within the district; pro- " vided, however, that if there should occur any error " in the publication of the sale of the delinquent pro- " perty, which might invalidate a sale made thereunder, " and such error is discovered prior to sale thereunder, " the collector shall at once republish the sale of the " property affected by such error, making such repub- " lication conform to the provisions of this law, and the " time of sale designated in such republication must " not be less than twenty-one nor more than twenty- " eight days from the first republication; and the place " of sale must be at some point designated by the col- " lector within the district, and stated in such repub- " lication.

" SALE FOR DELINQUENT TAXES.

" SEC. 43. The collector must collect, in addition to " the assessments due on the delinquent list and five per " cent added, fifty cents on each lot, piece, or tract of " land separately assessed. On the day fixed for the " sale, or some subsequent day to which he may have " postponed it, of which he must give notice, the col-

" lector, between the hours of ten A. M. and three o'clock " P. M., must commence the sale of the property adver- " tised, commencing at the head of the list and con- " tinuing alphabetically, or in the numerical order of " the lots or blocks, until completed. He may post- " pone the day of commencing the sales, or the sale, " from day to day, but the sale must be completed " within three weeks from the day first fixed; provided, " that if any sale or sales shall be stayed by legal pro- " ceedings, the time of the continuance of such pro- " ceedings is not part of the time limited for making " such sale or sales; and provided further, that in any " district where the validity of any assessment shall be " in litigation at the time this Act shall take effect, the " sale of any property, whether it be involved in such " litigation or not, may be postponed for a time not to " exceed four months.

"SEC. 44. The owner or person in possession of any " real estate offered for sale for assessments due thereon " may designate, in writing, to the collector, prior to " the sale, what portion of the property he wishes sold, " if less than the whole; but if the owner or possessor " does not, then the collector may designate it and the " person who will take the least quantity of the land, " or in case an undivided interest is assessed, then the " smallest portion of the interest, and pay the assess- " ments and costs due, including two dollars for the " duplicate certificate of sale, is the purchaser. If the " purchaser does not pay the assessments and costs

" before ten o'clock A. M. the following day, the prop-
" erty on the next sale day must be resold for the
" assessments and costs. But in case there is no pur-
" chaser in good faith for the same on the first day
" that the property is offered for sale, then, when the
" property is offered thereafter for sale, and there is no
" purchaser in good faith for the same, the whole
" amount of the property assessed shall be struck off
" to the irrigation district within which such lands are
" situated as the purchaser, and the duplicate certifi-
" cate delivered to the treasurer of the district, and filed
" by him in his office. No charge shall be made for
" the duplicate certificate where the district is the pur-
" chaser, and, in such case, the collector shall make an
" entry, 'Sold to the district,' and he shall be credited
" with the amount thereof in his settlement. An irri-
" gation district as a purchaser at such sale, shall be
" entitled to the same rights as a private purchaser,
" and the title so acquired by the district, subject to
" the right of redemption herein provided, may be con-
" veyed by deed, executed and acknowledged by the
" president and secretary of said board; provided, that
" authority to so convey must be conferred by reso-
" lution of the board entered on its minutes, fixing the
" price at which such sale may be made, and such con-
" veyance shall not be made for a less sum than the rea-
" sonable market value of such property.

"SEC. 45. After receiving the amount of assess-
" ments and costs, the collector must make out in dupli-

" cate a certificate, dated on the day of sale, stating " (when known) the name of the person assessed, a " description of the land sold, the amount paid therefor, " that it was sold for assessments, giving the amount " and year of the assessment, and specifying the time " when the purchaser will be entitled to a deed. The " certificate must be signed by the collector, and one copy " delivered to the purchaser, and the other filed in the " office of the County Recorder of the county in which " the land is situated.

"SEC. 46. The collector, before delivering any cer- " tificate, must in a book enter a description of the " land sold, corresponding with the description in " the certificate, the date of the sale, purchasers' " names, and amount paid, regularly number the de- " scription on the margin of the book, and put a cor- " responding number on each certificate. Such book " must be open to public inspection, without fee, during " office hours, when not in actual use. On filing the " certificate with such County Recorder the lien of the " assessments vests with the purchaser, and is only " divested by the payment to him, or to the collector " for his use, of the purchase money and two per cent " per month from the day of sale until redemption.

" REDEMPTION OF PROPERTY SOLD FOR DELINQUENT " TAXES.

" SEC. 47. A redemption of the property sold may " be made by the owner, or any party in interest, within

" twelve months from the date of purchase; provided,
" that all land heretofore sold at delinquent tax sale
" under any of the provisions of an Act entitled 'An
" 'Act to provide for the organization and government
" 'of irrigation districts, and to provide for the acquisi-
" 'tion of water and other property, and for the dis-
" 'tribution of water thereby for irrigation purposes,'
" approved March seventh, eighteen hundred and
" eighty-seven, or the Acts supplementary thereto or
" amendatory thereof, where deeds have not been made
" and delivered, or when such deed has been made to
" the district, and the district has not disposed of the
" same, may be redeemed at any time within six
" months from January twenty-seventh, eighteen
" hundred and ninety-seven. Redemption must be
" made in gold or silver coin, as provided for the col-
" lection of state and county taxes, and when made to
" the collector he must credit the amount paid to the
" person named in the certificate, and pay it, on de-
" mand, to the person or his assignees. In each report
" the collector makes to the board of directors, he must
" name the person entitled to redemption money, and
" the amount due each. On receiving the certificate of
" sale, the County Recorder must file it and make an
" entry in a book similar to that required of the col-
" lector. On the presentation of the receipt of the per-
" son named in the certificate, or of the collector for his
" use, of the total amount of the redemption money,
" the Recorder must mark the word 'redeemed,' the

" date, and by whom redeemed, on the certificate and " on the margin of the book where the entry of the cer- " tificate is made. If the property is not redeemed " within the time herein provided, the collector, or his " successor in office, must make to the purchaser, or his " assignee, a deed of the property, reciting in the deed " substantially the matters contained in the certificate, " and that no person redeemed the property during the " time allowed by law for its redemption. The collector " shall receive from the purchaser, for the use of the " district, two dollars for making such deed.

" SEC. 48. The matter recited in the certificate of " sale must be recited in the deed, and such deed duly " acknowledged or proved is prima facie evidence that: " (a) The property was assessed as required by law; (b) " the property was equalized as required by law; (c) " that the assessments were levied in accordance with " law; (d) the assessments were not paid; (e) at a " proper time and place the property was sold as pre- " scribed by law, and by the proper officer; (f) the pro- " perty was not redeemed; (g) the person who executed " the deed was the proper officer.

" Such deed duly acknowledged or proved is (except " as against actual fraud) conclusive evidence of the " regularity of all the proceedings from the assessment " by the assessor, inclusive, up to the execution of the " deed. The deed conveys to the grantee the absolute " title to the lands described therein free of all incum- " brances, except when the land is owned by the United

" States, or this State, in which case it is prima facie " evidence of the right of possession.

" SEC. 49. The assessment book or delinquent list, " or a copy thereof, certified by the collector, showing " unpaid assessments against any person, or property, " is prima facie evidence of the assessment, the property " assessed, the delinquency, the amount of assessments " due and unpaid, and that all the forms of the law in " relation to the assessment and levy of such assess- " ments have been complied with.

" SEC. 50. When land is sold for assessments cor- " rectly imposed as the property of a particular person, " no misnomer of the owner, or supposed owner, or " other mistake relating to the ownership thereof, af- " fects the sale, or renders it void or voidable.

" SEC. 51. On the first Monday in each month, the " collector must settle with the secretary of the board " for all moneys collected for assessments, and pay the " same over to the treasurer; and within six days there- " after he must deliver to and file in the office of the " secretary a statement under oath, showing: (a) An " account of all his transactions and receipts since his last " settlement; (b) that all money collected by him as " collector has been paid. The collector shall also file " in the office of the secretary, on said first Monday in " each month, the receipt of the treasurer for the " money so paid.

"REDEMPTION OF BONDS, AND PAYMENT OF INTEREST.

"SEC. 52. Upon the presentation of the coupons " due, to the treasurer, he shall pay the same from " the bond fund. Whenever said fund shall amount to " the sum of ten thousand dollars in excess of an " amount sufficient to meet the interest coupons due, " the board of directors may direct the treasurer to " pay such an amount of said bonds not due as the " money in said fund will redeem, at the lowest value " at which they may be offered for liquidation, after " advertising in the manner hereinbefore provided for " the sale of bonds, for sealed proposals for the " redemption of said bonds. Said proposals shall be " opened by the board in open meeting, at a time to be " named in the notice, and the lowest bid for said bonds " must be accepted; provided, that no bond shall be " redeemed at a rate above par. In case the bids are " equal, the lowest numbered bond shall have the pref- " erence. In case none of the holders of said bonds " shall desire to have the same redeemed, as herein " provided for, said money shall be invested by the " treasurer, under the direction of the board, in United " States bonds, or the bonds of the State, which shall " be kept in said 'bond fund,' and may be used to re- " deem said district bonds whenever the holders thereof " may desire.

"CONSTRUCTION OF WORKS.

" SEC. 53. After adopting a plan for such canal or " canals, storage reservoirs, and works, as in this Act

" provided for, the board of directors shall give notice,
" by publication thereof not less than twenty days in
" one newspaper published in each of the counties com-
" posing the district (provided, a newspaper is pub-
" lished therein), and in such other newspapers as they
" may deem advisable, calling for bids for the construc-
" tion of such work, or of any portion thereof; if less
" than the whole work is advertised, then the portion
" so advertised must be particularly described in such
" notice. Said notice shall set forth that plans and
" specifications can be seen at the office of the board,
" and that the board will receive sealed proposals there-
" for, and that the contract will be let to the lowest
" responsible bidder, stating the time and place for
" opening said proposals, which, at the time and place
" appointed, shall be opened in public; and as soon as
" convenient thereafter the board shall let said work,
" either in portions or as a whole, to the lowest re-
" sponsible bidder; or they may reject any or all bids
" and readvertise for proposals, or may proceed to construct
" the work under their own superintendence. Contracts
" for the purchase of material shall be awarded to the low-
" est responsible bidder. Any person or persons to whom
" a contract may be awarded shall enter into a bond,
" with good and sufficient sureties, to be approved by
" the board, payable to said district for its use, for
" twenty-five per cent of the amount of the contract
" price, conditioned for the faithful performance of
" said contract. The work shall be done under the

" direction and to the satisfaction of the engineer, and " be approved by the board.

"SEC. 54. No claim shall be paid by the treasurer " until allowed by the board, and only upon a warrant " signed by the president, and countersigned by the " secretary; provided, that the board may draw, from " time to time, from the construction fund, and deposit " in the county treasury of the county where the office " of the board is situated, any sum in excess of the " sum of twenty-five thousand dollars. The County " Treasurer of said county is hereby authorized and " required to receive and receipt for the same, and place " the same to the credit of said district, and he shall be " responsible upon his official bond for the safe-keeping " and disbursement of the same, as in this Act pro- " vided. He shall pay out the same, or any portion " thereof, to the treasurer of the district only, and only " upon the order of the board, signed by the president " and attested by the secretary. The said County Treas- " urer shall report, in writing, on the second Monday " in each month, the amount of money in the county " treasury, the amount of receipts for the month pre- " ceding, and the amount or amounts paid out; said " report shall be verified and filed with the secretary " of the board. The district treasurer shall also report " to the board, in writing, on the first Monday in each " month, the amount of money in the district treasury, " the amount of receipts for the month preceding, and " the amount and items of expenditures, and said report

" shall be verified and filed with the secretary of the " board.

"SEC. 55. The cost and expense of purchasing and " acquiring property and constructing the works and " improvements herein provided for, shall be wholly " paid out of the construction fund. For the purpose " of defraying the expenses of the organization of the " district, and of the care, operation, management, " repair, and improvement of such portions of said " canal and works as are completed and in use, includ- " ing salaries of officers and employes, the board may " in lieu (either in part or in whole) of levying assess- " ments as herein provided for, fix rates of tolls " and charges, and collect the same from all persons " using said canal for irrigation and other purposes.

" SEC. 56. The board of directors shall have power " to construct the said works across any stream of water, " watercourse, street, avenue, highway, railway, canal, " ditch, or flume which the route of said canal or canals " may intersect or cross, in such manner as to afford " security for life and property; but said board shall re- " store the same, when so crossed or intersected, to its " former state as near as may be, or in a sufficient " manner not to have impaired unnecessarily its use- " fulness; and every company whose railroad shall be " intersected or crossed by said works shall unite with " said board in forming said intersections and cross- " ings, and grant the privileges aforesaid; and if such " railroad company and said board, or the owners and

" controllers of the said property, thing, or franchise so " to be crossed, cannot agree upon the amount to be " paid therefor, or the points or the manner of said " crossings or intersections, the same shall be ascer- " tained and determined in all respects as is herein pro- " vided in respect to the taking of land. The right of " way is hereby given, dedicated, and set apart, to " locate, construct, and maintain said works over and " through any of the lands which are now or may be " the property of this State; and also there is given, " dedicated, and set apart, for the uses and purposes " aforesaid, all waters and water rights belonging to " this State within the district.

" GOVERNING DIRECTORS.

" SEC. 57. The directors, when sitting as a board, " or acting under the orders of the board, shall each re- " ceive not to exceed three dollars per day, and actual " and necessary expenses paid while engaged in official " business under the order of the board. The board " shall fix the compensation to be paid to all officers " named in this Act, to be paid out of the treasury of " the district; provided, that said board shall, upon the " petition of at least fifty, or a majority of the free- " holders within such district, therefor, submit to the " electors at any general election a schedule of salaries " and fees to be paid hereunder. Such petition must be " presented to the board not less than twenty days nor " more than forty days prior to a general election, and " the result of such election shall be determined and

" declared in all respects as other elections are deter-
" mined and declared under this Act.

" SEC. 58. No director or any other officer named in
" this Act shall in any manner be interested, directly
" or indirectly, in any contract awarded or to be
" awarded by the board, or in the profits to be derived
" therefrom; and for any violation of this provision,
" such officer shall be deemed guilty of a misdemeanor,
" and such conviction shall work a forfeiture of his
" office, and he shall be punished by a fine not exceed-
" ing five hundred dollars, or by imprisonment in the
" county jail not exceeding six months, or by both such
" fine and imprisonment.

" SPECIAL ASSESSMENTS.

" SEC. 59. The board of directors may, at any time,
" when in their judgment it may be deemed advisable,
" call a special election and submit to the qualified
" electors of the district the question, whether or not a
" special assessment shall be levied for the purpose of
" raising money to be applied to any of the purposes
" provided in this Act. Such election must be called
" upon the notice prescribed, and the same shall be
" held and the result thereof determined and declared
" in all respects in conformity with the provisions of
" section thirty of this Act. The notice must specify
" the amount of money proposed to be raised and the
" purpose for which it is intended to be used. At such
" elections the ballots shall contain the words 'Assess-

" ment—Yes,' or 'Assessment—No.' If two-thirds or " more of the votes cast are 'Assessment—Yes,' the " board shall, at the time of the annual levy hereunder, " levy an assessment sufficient to raise the amount " voted.

" SEC. 60. The rate of assessments levied under the " provisions of this Act shall be ascertained by deduct- " ing fifteen per cent for anticipated delinquencies from " the aggregate assessed value of the property in the " district as it appears on the assessment roll for the " current year, and then dividing the sum voted by the " remainder of such aggregate assessed value. The " assessments so levied shall be computed and entered " on the assessment roll by the secretary of the board, " and collected at the same time and in the same man- " ner as other assessments provided for herein; and " when collected shall be paid into the district treasury " for the purposes specified in the notice of such special " election.

"INCURRING INDEBTEDNESS.

"SEC. 61. The board of directors, or other officers " of the district, shall have no power to incur any debt " or liability whatever, either by issuing bonds or " otherwise, in excess of the express provisions of this " Act; and any debt or liability incurred in excess of " such express provisions shall be and remain abso- " lutely void, except that for the purposes of organiza- " tion, or for any of the purposes of this Act, the board

" of directors may, before the collection of the first " assessment, incur an indebtedness not exceeding in " the aggregate the sum of two thousand dollars, and " may cause warrants of the district to issue therefor, " bearing interest at seven per cent per annum.

"GOVERNING THE USE OF WATER.

"SEC. 62. In case the volume of water in any " stream or river shall not be sufficient to supply the " continual wants of the entire country through which " it passes, and susceptible of irrigation therefrom, " then it shall be the duty of the water commissioners, " constituted as hereinafter provided, to apportion, in " a just and equitable proportion, a certain amount of " said water upon certain or alternate weekly days to " different localities, as they may, in their judgment, " think best for the interest of all parties concerned, " and with due regard to the legal and equitable rights " of all. Said water commissioners shall consist of " the chairman of the board of directors of each of the " districts affected.

"SEC. 63. It shall be the duty of the board of direc- " tors to keep the water flowing through the ditches " under their control to the full capacity of such ditches " in times of high water.

"SEC. 64. Navigation shall never in anywise be " impaired by the operation of this Act, nor shall any " vested interest in or to any mining water rights or " ditches, or in or to any water or water rights, or

" reservoirs or dams now used by the owners or " possessors thereof in connection with any mining " industry, or by persons purchasing or renting the " use thereof, or in or to any other property now used, " directly or indirectly, in carrying on or promoting " the mining industry, ever be affected by or taken " under its provisions, save and except that rights of " way may be acquired over the same.

"SEC. 65. Nothing herein contained shall be " deemed to authorize any person or persons to divert " the waters of any river, creek, stream, canal, or " ditch from its channel, to the detriment of any person or " persons having any interest in such river, creek, stream, " canal, or ditch, or the waters therein, unless previous " compensation be ascertained and paid therefor, under " the laws of this State authorizing the taking of pri- " vate property for public uses.

" EXEMPTION FROM TAXATION—CREATION OF FUNDS.

"SEC. 66. The rights of way, ditches, flumes, pipe- " lines, dams, water rights, reservoirs, and other prop- " erty of like character, belonging to any irrigation " district, shall not be taxed for State and county or " municipal purposes.

"SEC. 67. The following funds are hereby created " and established, to which the moneys properly belong- " ing shall be apportioned, to-wit: Bond fund, con- " struction fund, general fund.

"GENERAL PROVISIONS.

"SEC. 68. The board of directors may, at any time " after the issue of any bonds or the levy of any " assessment herein provided for, bring an action in " the Superior Court of the county wherein is located " the office of such board, to determine the validity of " any such bonds or such levy of assessments; such " action shall be in the nature of a proceeding in rem, " and jurisdiction of all parties interested may be had " by publication of summons for at least once a week " for three weeks in some paper of general circulation " published in the county where the action is pending, " such paper to be designated by the court having jur- " isdiction of the proceedings. Jurisdiction shall be " complete within ten days after the full publication " of such summons in the manner herein provided. " Any one interested may at any time before the expi- " ration of said ten days appear and by proper proceed- " ings contest the validity of such bonds or assess- " ments. Such action shall be speedily tried and " judgment rendered declaring such matter so con- " tested either valid or invalid. Either party may " have the right to appeal to the Supreme Court at " any time within thirty days after the rendition of " such judgment, which appeal must be heard and de- " termined within three months from the time of tak- " ing such appeal.

"SEC 69. If such proceeding shall have been " brought by the board of directors, then, at any time

" within thirty days after the levy of any assessment " or issue of any bonds under the provisions of this " Act, any district assessment-payer may bring an " action in the Superior Court of the county where " the office of the board of directors is located, to de- " termine the validity of any such assessment or such " bonds. The board of directors shall be made parties " defendant, and service of summons shall be made " on the members of the board personally. Said board " shall have the right to appear and contest such action. " Such action shall be speedily tried, with the right of " appeal to either party, within the time and manner " herein provided for the bringing of actions by the " board to determine such matters. Such appeal shall " be heard and determined in the manner and within " the time therein provided.

" SEC. 70. If more than one action shall be pending " at the same time concerning similar contests in this " Act provided for, they shall be consolidated and tried " together.

" SEC. 71. The court hearing any of the contests " herein provided for, in inquiring into the regularity, " legality, or correctness of such proceedings, must dis- " regard any error, irregularity, or omission which does " not affect the substantial rights of the parties to said " action or proceeding. The rules of pleading and " practice provided by the Code of Civil Procedure, " which are not inconsistent with the provisions of this " Act, are applicable to all actions or proceedings

" herein provided for. The motion for a new trial of " any such action or proceeding must be heard and de- " termined within ten days from the filing of the notice " of intention. The costs on any hearing or contest " herein provided for, may be allowed and apportioned " between the parties, or taxed to the losing party, in " the discretion of the court.

" SEC. 72. No contest of anything or matter herein " provided shall be made other than within the time " and manner herein specified.

" SEC. 73. For any willful violation of any express " duty herein provided for, on the part of any officer " herein named, he shall be liable upon his official " bond, and be subject to removal from office, by pro- " ceedings brought in the Superior Court of the county " wherein the office of the board of directors of the dis- " trict is located, by any assessment-payer of the dis- " trict.

" EXCLUSION OF LANDS.

" SEC. 74. The boundaries of any irrigation district " now organized or hereafter organized under the pro- " vision of this Act, may be changed, and tracts of land " which were included within the boundaries of such " district at or after its organization under the pro- " visions of said Act, may be excluded theref rom,in the " manner herein prescribed; but neither such change " of the boundaries of the districts nor such exclusion " of lands from the district shall impair or affect its " organization, or its right in or to property, or any of

" its rights or privileges of whatever kind or nature;
" nor shall it affect, impair, or discharge any contract,
" obligation, lien, or charge for or upon which said dis-
" trict was and may become liable or chargeable, had
" such change of its boundaries not been made, or had
" not such land been excluded from the district.

" SEC. 75. The owner or owners in fee of one or
" more tracts of land which constitute a portion of an
" irrigation district may jointly or severally file with
" the board of directors of the district a petition, pray-
" ing that such tract or tracts, and any other tracts
" contiguous thereto, may be excluded and taken from
" said district. The petition shall state the grounds
" and reasons upon which it is claimed that such lands
" should be excluded, and shall describe the boundaries
" thereof, and also the lands of such petitioner or
" petitioners which are included within such boundaries;
" but the description of such lands need not be more
" particular or certain than is required when the lands
" are entered in the assessment book by the County
" Assessor. Such petition must be acknowledged in
" the same manner and form as is required in the case
" of a conveyance of land, and the acknowledgment
" shall have the same force and effect as evidence as
" the acknowledgment of such a conveyance.

" SEC. 76. The secretary of the board of directors
" shall cause a notice of the filing of such petition to
" be published for at least two weeks in some news-
" paper published in the county where the office of the

" board of directors is situated, and if any portion of " such territory to be excluded lie within another " county or counties, then said notice shall be so pub- " lished in a newspaper published within each of said " counties; or if no newspaper be published therein, " then by posting such notice for the same time in at " least three public places in said district, and in case " of the posting of said notices, one of said notices must " be so posted on the lands proposed to be excluded. " The notice shall state the filing of such petition, the " names of the petitioners, a description of the lands " mentioned in said petition, and the prayer of said " petition; and it shall notify all persons interested in, " or who may be affected by such change of the " boundaries of the district, to appear at the office of " said board at a time named in said notice, and show " cause, in writing, if any they have, why the change " of the boundaries of said district, as proposed in said " petition, should not be made. The time to be specified " in the notice at which they shall be required to show " cause shall be the regular meeting of the board next " after the expiration of the time for the publication of " the notice.

" SEC. 77. The board of directors, at the time and " place mentioned in the notice, or at the time or times " to which the hearing of said petition may be ad- " journed, shall proceed to hear the petition, and all " evidence or proofs that may or shall be introduced by " or on behalf of the petitioner or petitioners, and all

" objections to such petition that may or shall be pre-
" sented in writing by any person showing cause as
" aforesaid, and all evidence and proofs that may be in-
" troduced in support of such objections. Such evi-
" dence shall be taken down in shorthand, and a record
" made thereof and filed with the board. The failure of
" any person interested in said district, other than the
" holders of bonds thereof outstanding at the time of
" the filing of said petition with said board, to show
" cause, in writing, why the tract or tracts of land men-
" tioned in said petition should not be excluded from
" said district, shall be deemed and taken as an assent
" by him to the exclusion of such tract or tracts of
" land, or any part thereof, from said district; and the
" filing of such petition with said board, as aforesaid,
" shall be deemed and taken as an assent by each and
" all of such petitioners to the exclusion from such dis-
" trict of the lands mentioned in the petition, or any
" part thereof. The expenses of giving said notice and
" of the aforesaid proceeding shall be paid by the person
" or persons filing such petition.

" SEC. 78. If, upon the hearing of any such petition,
" no evidence or proofs in support thereof be introduced,
" or if the evidence fail to sustain said petition, or if
" the board deem it not for the best interests of the dis-
" trict that the lands, or some portion thereof, men-
" tioned in the petition, should be excluded from the
" district, the board shall order that said petition be de-
" nied as to such lands; but if the said board deem it

" for the best interests of the district that the lands
" mentioned in the petition, or some portion thereof,
" be excluded from the district, and if no person inter-
" ested in the district show cause, in writing, why the
" said lands, or some portion thereof, should not be ex-
" cluded from the district, or if, having shown cause,
" withdraws the same, or upon the hearing fails to es-
" tablish such objections as he may have made, then it
" shall be the duty of the board to, and it shall forth-
" with, make an order that the lands mentioned and de-
" scribed in the petition, or some defined portion there-
" of, be excluded from said district; provided, that it
" shall be the duty of said board to so order, upon pe-
" tition therefor as aforesaid, that all lands so petitioned
" to be excluded from said district shall be excluded
" therefrom which cannot be irrigated from, or which
" are not susceptible to, or would not, by reason of
" being permanently devoted to uses other than agri-
" cultural, horticultural, viticultural, or grazing, be di-
" recty benefited by the actual irrigation of the same
" from a common source, or by the same system of
" works with the other lands of said district, or from
" the source selected, chosen or provided, or the system
" adopted for the irrigation of the lands of said district,
" or which are already irrigated, or entitled to be irri-
" gated, from another source or by another system of
" irrigation works; but no lands included within the
" limits of any city or town, or which shall have been
" subdivded into town lots or blocks, shall be excluded

" under the provisions of this Act.

SEC. 79. If there be outstanding bonds of the dis-
" trict at the time of the filing of said petition, the hold-
" ers of such outstanding bonds may give their assent,
" in writing, to the effect that they severally consent
" that the lands mentioned in the petition, or such por-
" tion thereof as may be excluded from said district by
" order of said board, or the decree of the Superior
" Court as hereinafter provided, may be excluded from
" the district; and if said lands, or any portion thereof,
" be thereafter excluded from the district, the lands so
" excluded shall be released from the lien of such out-
" standing bonds. The assent must be acknowledged
" by the several holders of such bonds in the same man-
" ner and form as is required in case of a conveyance
" of land, and the acknowledgment shall have the
" same force and effect as evidence as the acknowledg-
" ment of such conveyance. The assent shall be filed
" with the board, and must be recorded in the minutes
" of the board; and said minutes, or a copy thereof, cer-
" tified by the secretary of said board, shall be admiss-
" ible in evidence, with the same effect as the said
" assent, and such certified copy thereof may be re-
" corded in the office of the County Recorder of the
" county wherein said lands are situated.

" SEC. 80. In the event the said board of directors
" shall exclude any lands from said district upon petition
" therefor, it shall be the duty of the board of directors
" to make an entry in the minutes of the board, describ-

" ing the boundaries of the district, should the exclusion " of said lands from said district change the boundaries " of said district, and for that purpose the board may " cause a survey to be made of such portions of the " district as the board may deem necessary; and a certi- " fied copy of the entry in the minutes of the board " excluding any land, certified by the president and " secretary of the board, shall be filed for record in the " Recorder's office of each county within which are " situated any of the land of the district; but said " district, notwithstanding such exclusion, shall be and " remain an irrigation district as fully, to every intent " and purpose, as it would be had no change been " made in the boundaries of the district, or had the " lands excluded therefrom never constituted a portion " of the district.

" SEC. 81. If the lands excluded from any district " under this Act shall embrace the greater portion of " any division or divisions of such district, then the " office of director for such division or divisions shall " become and be vacant at the expiration of ten days " from the final order of the board excluding said lands; " and such vacancy or vacancies shall be filled by " appointment by the Board of Supervisors of the county " where the office of such board is situated, from the " district at large. A director appointed as above " provided, shall hold his office until the next regular " election for said district, and until his successor is " elected and qualified.

"SEC. 82. At least thirty days before the next "general election of such district, the board of directors "thereof shall make an order dividing said district "into three or five divisions, as the case may require, "as nearly equal in size as may be practicable, which "shall be numbered first, second, third, and so on, and "one director shall be elected by each division. For "the purposes of elections in such district, the said "board of directors must establish a convenient num- "ber of election precincts, and define the boundaries "thereof, which said precincts may be changed from "time to time, as the board of directors may deem "necessary.

"SEC. 83. A guardian and executor, or an admin- "istrator of an estate, who is appointed as such under "the laws of this State, and who, as such guardian, "executor, or administrator, is entitled to the posses- "sion of the lands belonging to the estate which he "represents, may, on behalf of his ward, or the estate "which he represents, upon being thereto properly "authorized by the proper court, sign and acknowledge "the petition in this Act mentioned, and may show "cause, as in this Act provided, why the boundaries of "the district should not be changed.

"SEC. 84. Nothing in this Act provided shall, in "any manner, operate to release any of the lands so "excluded from the district from any obligation to "pay, or any lien thereon, of any valid outstanding "bonds or other indebtedness of said district at the

" time of the filing of said petition for the exclusion of " said lands, but upon the contrary, said lands shall " be held subject to said lien, and answerable and " chargeable for and with the payment and discharge " of all of said outstanding obligations at the time of " the filing of the petition for the exclusion of said " land, as fully as though said petition for such " exclusion were never filed and said order or decree " of exclusion never made; and for the purpose of dis- " charging such outstanding indebtedness, said lands " so excluded shall be deemed and considered as part " of said irrigation district the same as though said " petition for its exclusion had never been filed or said " order or decree of exclusion never made; and all " provisions which may have been resorted to " to compel the payment by said lands of its quota " or portion of said outstanding obligations, had said " exclusion never been accomplished, may, notwith- " standing said exclusion, be resorted to to compel and " enforce the payment on the part of said lands of its " quota and portion of said outstanding obligations of " said irrigation district for which it is liable, as herein " provided. But said land so excluded shall not be " held answerable or chargeable for any obligation of " any nature or kind whatever, incurred after the filing " with the board of directors of said district of the " petition for the exclusion of said lands from the said " district; provided, that the provisions of this section " shall not apply to any outstanding bonds, the holders

" of which have assented to the exclusion of such lands " from said district, as hereinbefore provided.

" INCLUSION OF LANDS.

" SEC. 85. The boundaries of any irrigation district " now organized or hereafter organized under the pro- " visions of this Act may be changed in the manner " herein prescribed; but such change of the boundaries " of the district shall not impair or affect its organiz- " ation, or its rights in or to property; or any of its " rights or privileges of whatsoever kind or nature; nor " shall it affect, impair, or discharge any contract, ob- " ligation, lien, or charge for or upon which it was or " might become liable or chargeable, had such change " of its boundaries not been made.

" SEC. 86. The holder or holders of title, or evidence " of title, representing one half or more of any body of " lands adjacent to the boundary of an irrigation dis- " trict, which are contiguous, and which, taken together, " constitute one tract of land, may file with the board " of directors of said district a petition, in writing, pray- " ing that the boundaries of said district may be so " changed as to include therein said lands. The petition " shall describe the boundaries of said parcel or tract of " land, and shall also describe the boundaries of the " several parcels owned by the petitioners, if the peti- " tioners be the owners, respectively, of distinct parcels, " but such descriptions need not be more particular " than they are required to be when such lands are en-

" tered by the County Assessor in the assessment book. " Such petition must contain the assent of the petition- " ers to the inclusion within said district of the parcels " or tracts of land described in the petition, and of " which said petition alleges they are, respectively, the " owners; and it must be acknowledged in the same " manner that conveyances of land are required to be " acknowledged.

" SEC. 87. The secretary of the board of directors " shall cause a notice of the filing of such petition to " be given and published in the same manner and for " the same time that notices of special elections for the " issue of bonds are required by this Act to be pub- " lished. The notice shall state the filing of such peti- " tion and the names of the petitioners, a description of " the lands mentioned in said petition, and the prayer " of said petition; and it shall notify all persons inter- " ested in, or that may be affected by such change of " the boundaries of the district, to appear at the office " of said board, at a time named in said notice, and " show cause in writing, if any they have, why the " change in the boundaries of said district, as proposed " in said petition, should not be made. The time to be " specified in the notice at which they shall be required " to show cause shall be the regular meeting of the " board next after the expiration of the time for the " publication of the notice. The petitioners shall ad- " vance to the secretary sufficient money to pay the " estimated costs of all proceedings under this Act.

"SEC. 88. The board of directors, at the time and "place mentioned in the said notice, or at such other "time or times to which the hearing of said petition "may be adjourned, shall proceed to hear the petition, "and all the objections thereto, presented in writing "by any person showing cause as aforesaid why said "proposed change of the boundaries of the district "should not be made. The failure by any person in- "terested in said district, or in the matter of the pro- "posed change of its boundaries, to show cause, in "writing, as aforesaid, shall be deemed and taken as "an assent on his part to a change of the boundaries of "the district as prayed for in said petition, or to such a "change thereof as will include a part of said lands. "And the filing of such petition with said board, as "aforesaid, shall be deemed and taken as an assent on "the part of each and all of such petitioners to such a "change of said boundaries that they may include the "whole or any portion of the lands described in said "petition.

"SEC. 89. The board of directors to whom such "petition is presented, may require, as a condition pre- "cedent to the granting of the same, that the petition- "ers shall severally pay to such district such respective "sums, as nearly as the same can be estimated (the "several amounts to be determined by the board), as "said petitioners or their grantors would have been re- "quired to pay to such district as assessments, had "such lands been included in such district at the time

" the same was originally formed.

" SEC. 90. The board of directors, if they deem it " not for the best interests of the district that a change " of its boundaries be so made as to include therein " the lands mentioned in the petition, shall order that " the petition be rejected. But if they deem it for the " best interests of the district that the boundaries of " said district be changed, and if no person interested " in said district or the proposed change of its bound- " aries shows cause, in writing, why the proposed " change should not be made, or if, having shown " cause, withdraws the same, the board may order that " the boundaries of the district be so changed as to in- " clude therein the lands mentioned in said petition or " some part thereof. The order shall describe the " boundaries as changed, and shall also describe the " entire boundaries of the district as they will be after " the change thereof as aforesaid is made; and for that " purpose the board may cause a survey to be made of " such portions of such boundary as is deemed neces- " sary.

" SEC. 91. If any person interested in said district, " or the proposed change of its boundaries, shall show " cause as aforesaid why such boundaries should not be " changed, and shall not withdraw the same, and if the " board of directors deem it for the best interests of the " district that the boundaries thereof be so changed as " to include therein the lands mentioned in the petition, " or some part thereof, the board shall adopt a resolu-

" tion to that effect. The resolution shall describe the " exterior boundaries of the lands which the board are " of the opinion should be included within the boun- " daries of the district when changed.

" SEC. 92. Upon the adoption of the resolution men- " tioned in the last preceding section, the board shall order " that an election be held within said district, to deter- " mine whether the boundaries of the district shall be " changed as mentioned in said resolution; and shall fix " the time at which such election shall be held, and " cause notice thereof to be given and published. Such " notice shall be given and published, and such election " shall be held and conducted, the returns thereof shall " be made and canvassed, and the result of the election " ascertained and declared, and all things pertaining " thereto conducted in the manner prescribed by said " Act in case of a special election to determine whether " bonds of an irrigation district shall be issued. The " ballots cast at said election shall contain the words " 'For change of boundary,' or 'Against change of " 'boundary,' or words equivalent thereto. The notice " of election shall describe the proposed change of the " boundaries in such manner and terms that it can " readily be traced.

" SEC. 93. If at such election a majority of all the " votes cast at said election shall be against such " change of the boundaries of the district, the board " shall order that said petition be denied, and shall pro- " ceed no further in that matter. But if a majority of

" such votes be in favor of such change of the boun-
" daries of the district, the board shall thereupon order
" that the boundaries be changed in accordance with
" said resolution adopted by the board. The said order
" shall describe the entire boundaries of said district,
" and for that purpose the board may cause a survey
" of such portions thereof to be made as the board may
" deem necessary.

" SEC. 94. Upon a change of the boundaries of a
" district being made, a copy of the order of the board
" of directors ordering such change, certified by the
" president and secretary of the board, shall be filed for
" record in the Recorder's office of each county within
" which are situated any of the lands of the district,
" and thereupon the district shall be and remain an ir-
" rigation district, as fully, and to every intent and
" purpose, as if the lands which are included in the
" district by the change of the boundaries, as aforesaid,
" had been included therein at the original organization
" of the district.

" SEC. 95. Upon the filing of the copies of the order,
" as in the last preceding section mentioned, the secre-
" tary shall record in the minutes of the board the pe-
" tition aforesaid; and the said minutes, or a certified
" copy thereof, shall be admissible in evidence, with the
" same effect as the petition.

" SEC. 96. A guardian, an executor or an adminis-
" trator of an estate, who is appointed as such under
" the laws of this State, and who, as such guardian,

" executor, or administrator, is entitled to the posses-
" sion of the lands belonging to the estate which he
" represents, may, on behalf of his ward, or the estate
" which he represents, upon being thereunto author-
" ized by the proper court, sign and acknowledge the
" petition in this Act mentioned, and may show cause,
" as in this Act mentioned, why the boundaries of the
" district should not be changed.

" SEC. 97. In case of the inclusion of any land with-
" in any district by proceedings under this Act, the
" board of directors must, at least thirty days prior to
" the next succeeding general election, make an order
" redividing such district into three or five divisions, as
" the case may require, as nearly equal in size as may
" be practicable, which shall be numbered first, second,
" third and so on, and one director shall thereafter be
" elected by each division. For the purposes of elec-
" tions, the board of directors must establish a conven-
" ient number of election precincts in said districts, and
" define the boundaries thereof, which said precincts
" may be changed from time to time, as the board may
" deem necessary.

" REDUCTION OF BONDED INDEBTEDNESS.

" SEC. 98. Whenever the board of directors of an
" irrigation district heretofore organized, or hereafter
" organized under the provisions of this Act, shall
" determine that the authorized bonded indebtedness of
" such irrigation district is greater than such district

" is liable to need to complete its system as planned, " and there be no outstanding bonds, the board of " directors may call a special election for the purpose of " voting upon a proposition to reduce such bonded " indebtedness to such sum as the board may determine " to be sufficient for such purpose.

" SEC. 99. Notice of the said election shall be given " in the same manner as provided in section thirty of " said Act, in relation to calling special elections for " issuance of bonds. The notice of election must state " the amount of the authorized bonded indebtedness of " such district, and the amount to which it is proposed to " reduce the same; also, the date on which said election " will be held, and the polling places, as established by " said board of directors. The ballots cast at said " election shall contain the words 'For reducing " bonds—Yes,' or 'For reducing bonds—No.' When " the vote is canvassed by the board of directors and " entered of record, if a majority of the votes cast " shall be 'For reducing bonds—Yes,' then in that " event the board of directors shall only be empowered " to issue or sell such amount of bonds as was " stipulated in the said notice of such special election; " but if a majority of said votes are not 'For reducing " bonds—Yes,' then the authority to issue bonds shall " remain the same as before said special election was " held.

" SEC. 99½. In case there be outstanding bonds of " any district desiring to take advantage of the pro-

" visions of this Act concerning reduction of bonded " indebtedness, the assent of such bondholders may " be obtained to such reduction of the bonded indebt- " edness, in the same manner as provided in section " seventy-nine of this Act. If such assent is obtained " in the manner therein provided, then, and in that " event, such district shall be empowered to take " advantage of all the provisions of this Act, but " not otherwise. No reduction of the bonded indebt- " edness, as in this Act provided, shall in any manner " affect any order of court that may have been made, " adjudicating and confirming the validity of said bonds.

" LEASE OF WATER.

" SEC. 100. Whenever any irrigation district, hereto- " fore organized, or hereafter organized under the pro- " visions of this Act, in the development of its works " as by law provided, may have opportunity, without " increased expenditure, to utilize the water by it " owned or controlled, for mechanical purposes not " inconsistent with the provisions of said Act, the " board of directors may lease the same, as in this " Act hereinafter provided.

" SEC. 101. Whenever the board of directors may " desire to lease the use of water, as hereinbefore stated, " they shall pass a resolution of intention to so lease " the same. Immediately thereafter the secretary shall " cause notice of such intention to be given by pub- " lication in one newspaper published in each

" county in which lands of the district are situated, " for at least twenty days (provided, a newspaper is " published therein, otherwise in any newspaper the " board of directors may select), and, if the board thinks " proper in such other newspapers as may be deemed " advisable, calling for bids for the leasing of said " water for the purposes hereinbefore mentioned. Said " notice shall state that the board will receive sealed " proposals therefor, that the lease will be let to the " highest responsible bidder, stating the time and place " of opening said proposals.

" SEC. 102. At the time and place appointed the " board shall proceed to open the proposals in public. " As soon thereafter as may be convenient the board " shall let said lease in portions, or as a whole, to " the highest responsible bidder, or they may reject " any or all bids, and readvertise for proposals for the " same.

" SEC. 103. The rental accruing upon said lease " may vary from year to year, as shall be specified in " said lease, and shall be payable semi-annually, on " the thirtieth day of December and thirtieth day of " June of each year. All moneys collected, as in this " Act provided, shall be paid into the treasury, and be " apportioned to such funds as may be deemed advisable.

" SEC. 104. The board shall have power, as in this " Act provided, to execute a lease for any period not " exceeding twenty-five years. If at any time the " rental shall not be paid on the days hereinbefore

" mentioned, the amount of such rental then due shall " be doubled, and if not paid within ninety days there- " after, the said lease shall be forfeited to said district, " together with any and all works constructed, owned, " used, or controlled by said lessee.

" SEC. 105. Upon the letting of any lease, as in this " Act provided, the board may require the lessee to ex- " ecute a bond for the faithful performance of the cove- " nants of said lease, or give such other evidence of " good faith as in their judgment may be necessary.

" DESTRUCTION OF UNSOLD BONDS.

" SEC. 106. Whenever there remains in the hands " of the board of directors of any irrigation district " heretofore organized, or organized under the pro- " visions of this Act, after the completion of its ditch " system, and the payment of all demands against such " district, any bonds voted to be issued by said district, " but not sold, and not necessary to be sold for the " raising of funds for the use of such district, said " board of directors may call a special election for the " purpose of voting upon a proposition to destroy said " unsold bonds, or so many of them as may be deemed " best, or may submit such proposition at a general " election.

" SEC. 107. Such election shall be held in the same " manner as other elections held under the provisions " of this Act. A notice of such election shall be given " in the same manner as provided in section thirty of

" this Act in relation to calling special elections for the " issuance of bonds. The notice of election must state " the amount of the bonded indebtedness of such dis- " trict authorized by the vote of the district, the amount " of the bonds remaining unsold, and the amount pro- " posed to be destroyed, and the date on which such " election is proposed to be held, and the polling places " as fixed by the board of directors. The ballots to be " cast at such election shall contain the words 'For de- " stroying bonds—Yes,' and 'For destroying bonds— " 'No,' and the voter must erase the word 'No' in case " he favors the destruction of bonds, otherwise the word " 'Yes.'

" SEC. 108. When the vote is canvassed by the " board of directors and entered of record, if a two- " thirds majority of the votes cast should be found to " be in favor of the destruction of said bonds, then the " president of the board, in the presence of a majority " of the members of the board, must destroy the bonds " so voted to be destroyed; and the total amount of " bonds so destroyed and canceled shall be deducted " from the sum authorized to be issued by the electors " of said district, and no part thereof shall thereafter be " reprinted or reissued.

" SAVING CLAUSES.

" SEC. 109. Nothing in this Act shall be so con- " strued as to affect the validity of any district hereto- " fore organized under the laws of this State, or its " rights in or to property, or any of its rights or

" privileges of whatsoever kind or nature; but said dis-
" tricts are hereby made subject to the provisions of
" this Act so far as applicable; nor shall it affect, im-
" pair, or discharge any contract, obligation, lien, or
" charge, for or upon which it was or might become
" liable or chargeable had not this Act been passed;
" nor shall it affect the validity of any bonds which
" have been issued but not sold; nor shall it affect any
" action which now may be pending.

"SEC. 110. Nothing in this Act shall be construed
" as repealing or in anywise modifying the provisions
" of any other Act relating to the subject of irrigation
" or water commissioners, except such as may be con-
" tained in the Act, an Act entitled an Act to provide
" for the organization and government of irrigation dis-
" tricts, and to provide for the acquisition of water and
" other property, and for the distribution of water
" thereby for irrigation purposes, approved March
" seventh, eighteen hundred and eighty-seven, and the
" subsequent Acts supplementary thereto, and amend-
" atory thereof, all of which acts, so far as they may be
" inconsistent herewith, are hereby repealed.

" SEC. 111. This Act shall take effect from and
" after its passage and approval."

PART SECOND.

SPECIFICATION OF ERRORS RELIED UPON.

The following is a specification of the errors relied upon by the plaintiffs in error:

I.

The Court erred in overruling, and in not sustaining so much of the demurrer interposed by the defendant to the complaint, on the ground that said complaint does not state facts sufficient to constitute a cause of action. (Errors Assigned, *Record*, pp. 431, 447.)

II.

The Court erred in holding and deciding that the complaint is sufficient in law to support the judgment herein. (Errors Assigned, *Record* pp. 431, 447.)

III.

The Court erred in admitting in evidence the first twelve (12) paragraphs of the stipulation made by the parties hereto, as to the truth of certain facts, filed in said action on the 29th day of March, A. D. 1900, which twelve paragraphs, in substance, severally admit the following facts to be true:

1st PARAGRAPH.

That the plaintiff is and for ten years has been a citizen and resident of the State of Michigan, and that David Shepard and F. H. Shepard for ten years have

also been residents and citizens of the State of Michigan.

2nd PARAGRAPH.

That under the provisions of the Act of the Legislature of the State of California, entitled: "An Act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water for irrigation purposes", approved March 7th, 1887, an effort was made in the County of Tulare, State of California, to form an irrigation district, and such proceedings in that behalf were had that what purported to be a certified copy of the order of said Board of Supervisors, was duly filed with the County Recorder of said county on the 14th day of September, A. D. 1889, a certified copy of which certified copy is annexed to said stipulation, marked "A", which is an order made by the Board of Supervisors of the County of Tulare, and entered upon its minutes of the 2nd day of September, 1889, setting forth the result of an election held on the 24th day of August, 1889, within the proposed boundaries of said Tulare Irrigation District, to vote on the question whether or not said district should be organized, designating the persons elected to the various offices prescribed by said Act of the Legislature of March 7th, 1887, and declaring said district organized under the name of "Tulare Irrigation District".

That the persons declared by said order of the Board of Supervisors to have been elected as officers of said

district, immediately thereafter purported to organize as such officers and thereupon entered upon their duties as such officers the same as if said district had been legally organized, and as if there had been legally elected such officers, and that they and their successors in office have ever since continued to act as such officers, and to maintain the name of "Tulare Irrigation District", and in its name have caused the defendant to act as if it was in every respect legally organized as an irrigation district, under said Act of the Legislature, and in that behalf has at all such times had the name of Tulare Irrigation District printed upon a sign above the door, in front of an office in which the archives and papers of said defendant are kept; and its Board of Directors have met from time to time in such room, from the time of such purported organization thereof until the present time, weekly, and sometimes oftener, averaging twice a month.

And in the years 1891, 1892 and 1893, its Board of Directors purported to issue bonds of such Tulare Irrigation District in the sum of $500,000, being 1000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing, under the said Act of the Legislature; and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such

bonds; that it has engaged in litigation as plaintiff in suits, of them before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said Act of the Legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continued to act and hold itself out as such corporation organized under said law.

3rd PARAGRAPH.

That the lands embraced in the limits of said district are, and always have been in the said County of Tulare.

4TH PARAGRAPH.

That after certain proceedings had been had by the Board of Directors of said defendant, the said defendant called a special election of the electors of said district at which should be submitted the question whether or not bonds of said district should be issued to the amount of $500,000; that such an election was held on June 7th, 1890; that the same was carried; and that on or about July 1st, 1890, the Board of Directors of said district ordered that bonds of said district in the sum of $500,000 be issued, divided into 1000 bonds of $500 each, numbered consecutively from one to one thousand.

5TH PARAGRAPH.

That thereupon the said Board of Directors caused

1000 bonds of said district to be printed, and each of them, together with the coupons thereto attached, were in the form as alleged in the complaint herein, a copy of one of which bonds, numbered 400, is annexed to the complaint, marked "Exhibit A".

6TH PARAGRAPH.

That said bonds were all disposed of by the said board of directors during the years 1891, 1892 and 1893.

7TH PARAGRAPH.

That as a result of the disposal of said bonds the defendant was enabled to and did build and construct an irrigation system, whereby it irrigated lands within the district, but not the whole thereof at any time.

8TH PARAGRAPH.

That the interest coupons of each of said bonds were promptly paid every six months, until July 1st, 1896.

9TH PARAGRAPH.

That no one ever brought an action to prevent the issuance of any of said bonds.

10TH PARAGRAPH.

That no suit or action was ever brought to annul or cancel or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in any way questioned, nor

until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive were in any way questioned except as to the constitutionality of the said Act of the said Legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D. 1895.

11TH PARAGRAPH.

That the plaintiff, at the commencement of this action, was the holder of the coupons in the complaint alleged to be held and owned by him, and on which this action was brought.

12TH PARAGRAPH.

That the plaintiff became the holder of the coupons on which this action is brought, some by purchase directly and others by mesne conveyance, in good faith, for the full value thereof, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of the bonds, or of any of them, to which said coupons, or any thereof, were attached, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity and so became the holder thereof under the full belief that all the requirements of the law necessary to their validity had been performed and observed and complied with. (Errors Assigned, *Record*, pp. 431, 447.)

IV.

Error in admitting in evidence a certified copy of the judgment roll in the matter of the Tulare Irrigation District. Said judgment roll is composed of documents in substance as follows:

(1) A petition by the Board of Directors of Tulare Irrigation District to the Superior Court of Tulare County, setting forth the various proceedings which had been taken with a view to the organization of the Tulare Irrigation District and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the Court.

(2) An order by the Superior Court of Tulare County reciting the filing of the above mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3) An affidavit of one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

(4) An affidavit of one Edward Oakford, secretary of the Board of Directors of Tulare Irrigation District, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5) The findings of fact and conclusions of law of said Superior Court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set

forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the Board of Directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds and the order for the sale of such bonds are legal and valid and entitled to approval and confirmation, and that said Board of Directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6) The judgment of said Court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district to be valid and legal, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form. (Errors Assigned, *Record*, pp. 435, 451.)

V.

The Court erred in sustaining the objection of plaintiff to the admission in evidence of the 13th paragraph of said stipulation and the facts therein set forth, and to the admission in evidence of Exhibit B therein referred to, and in refusing to admit and excluding said 13th paragraph and the facts stated therein and said Exhibit B, all of which were offered in evidence by the defendant and intervenors. Said 13th paragraph is in words and figures as follows:

"That a petition, a copy of which is hereunto annexed marked 'Exhibit B', was on the 1st day of July, 1889, filed with and presented to the Board of Supervisors of Tulare County at a regular meeting of said board, and no other petition for the organization of Tulare Irrigation District has ever been presented to or filed with said Board of Supervisors which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare County, to-wit: the Weekly Tulare Register."

Said Exhibit B is a copy of a petition presented to the Board of Supervisors of Tulare County by parties whose names are signed to said petition and claiming to be freeholders owning land within the proposed district. In said petition it is stated that the petitioners desire to provide for the irrigation of the land within the proposed district, all of which is susceptible to one mode of irrigation by conveying the waters of Kaweah

River to said land; petitioners pray that the district described in the petition be organized as an irrigation district under the Act of March 7, 1887 (the Wright Act), and the petition contains a description by metes and bounds of the boundaries of the proposed district. (Errors Asigned, *Record* pp. 437, 453.)

VI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 14th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit C therein referred to, and in refusing to admit and excluding said 14th paragraph and the facts stated therein and said Exhibit C, all of which were offered in evidence by said defendant and intervenors. Said paragraph 14 is in words and figures as follows:

" That during the time said petition was printed and published in said newspaper and immediately following and below said petition, as published, and in the same column of the paper was printed a notice, a copy of which notice is hereunto annexed and marked 'Exhibit C', and no other notice of the hearing of said or any petition for the organization of Tulare Irrigation District, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two blank lines across the column, the first at the head of such petition, and the last at the end of such notice."

Said Exhibit C is in words and figures as follows:

"NOTICE.

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the Board of Supervisors in and for the County of Tulare, at their first regular meeting, in the month of July, 1889, to-wit: On Monday the 1st day of July, 1889, at which time any person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted." (Errors Assigned, *Record* pp. 438, 454.)

VII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 15th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit D therein referred to, and in refusing to admit and excluding said 15th paragraph and the facts stated therein and said Exhibit D, all of which were offered in evidence by said defendant and intervenors. Said 15th paragraph is in words and figures as follows, to-wit:

"That at the time of the presentation of said petition, the said Board of Supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII on page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which

is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed, marked 'Exhibit D'."

Said order referred to in said 15th paragraph as appearing on page 17 of the defendant's answer, is an order entered on the minutes of the Board of Supervisors of Tulare County on July 1, 1889, and is to the effect that a petition praying for the formation of an irrigation district to be known as the Tulare Irrigation District having been filed and presented to the board, and the necessary bond having been filed with said petition, and it satisfactorily appearing to the board that due notice of the presentation of said petition had been given as required by law, and certain persons having appeared and asked to have their lands excluded from the district, thereupon the board ordered that the hearing of the said petition be set for Saturday, July 6th, 1889, at 10 A. M. Said order referred to as entered on July 6th is an order stating that "the board occupied the day in hearing testimony to have lands excluded from said district."

Said Exhibit D referred to in said 15th paragraph is a copy of an order of the Board of Supervisors of Tulare County made after the hearing of the petition for the formation of the Tulare Irrigation District. Said order recites the proceedings taken in connection with the petition, including the publication of the notice of the hearing thereof and the fact that certain parties

had been heard upon the question whether their lands should be excluded from the district. Said order then proceeds to declare and establish the boundaries of the proposed irrigation district and describes them by metes and bounds, with a specific description of certain lands excepted and taken out of the proposed district as thus described. The order further provides for the division of the proposed district into five divisions, and describes the boundaries of each division. It further orders an election for the purpose of determining whether the proposed district shall be organized, and names the time and the various polling places. The order further provides for notice of such election and names the offices of the proposed district which are to be filled by officers to be voted for at said election, and concludes by describing five election precincts. (Errors Assigned, *Record* pp. 439, 455.)

VIII.

Error in sustaining plaintiff's objection to the admission in evidence of paragraph 16th of said stipulation and the facts therein set forth and to the admission of Exhibit E therein referred to, and in refusing to admit and excluding said 16th paragraph and the facts stated therein and said Exhibit E, all of which were offered in evidence by said defendant and intervenors. Said paragraph 16 is in words and figures as follows, to-wit:

"That on the 2nd day of September, 1899, the clerk

of said Board of Supervisors, entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked 'Exhibit E'."

Said Exhibit E referred to in said 16th paragraph is a copy of an order of the Board of Supervisors of Tulare County, by which said Board of Supervisors declare the result of their canvass of the election held for the purpose of voting for and against the organization of the Tulare Irrigation District and for officers thereof. In this order the Supervisors make a statement of the votes cast for and against the organization of the district, showing the result to be in favor of organizing the district, and a further statement of the number of votes cast for the various officers of the district. The order then declares the territory embraced within certain limits, which are specifically described by metes and bounds, to be an irrigation district, duly organized under the name and style of Tulare Irrigation District, and further declares the election of certain named parties as officers of the district. (Errors Assigned, *Record* pp. 440, 456.)

IX.

Error in sustaining the objection of plaintiff to the admission in evidence of the 17th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 17th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 17th

paragraph is in words and figures as follows, to wit:

"That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said Board of Supervisors, nor in any way referred to or identified than as appears in the orders of said board hereinbefore set forth and hereto annexed." (Errors Assigned, *Record* pp. 441, 457.)

X.

Error in sustaining objection of plaintiff to the admission in evidence of the 18th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit A therein referred to, and in refusing to admit and excluding said 18th paragraph and the facts stated therein and the said Exhibit A, all of which were offered in evidence by said defendant and intervenors.

Said paragraph 18 is in words and figures as follows, to wit:

"That said board caused to be filed for record in the office of the recorder of said Tulare County, on September 14, 1889, the certified copy of the order hereunto annexed marked 'Exhibit A', hereinbefore referred to, and no other order of said board relating to the organization of said district was ever filed in the office of the county recorder of said Tulare County. That an election was called and held as recited in said 'Exhibit A', of which due notice was given, and in such notice the lands of such proposed district were the same as those recited in said 'Exhibit A' as constituting

such proposed district."

Said Exhibit A is a copy of an order of the Board of Supervisors entered on its minutes of September 2d, 1889, declaring said district organized and designating the persons elected as officers thereof. (Errors Assigned, *Record* pp. 441, 458.)

XI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 19th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 19th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 19th paragraph is in words and figures as follows, to wit:

"No other orders or proceedings relating to the organization of said district, were ever made or had by said Board of Supervisors, than as herein stipulated and as recited in said exhibits." (Errors Assigned, *Record* pp. 442, 458.)

XII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 20th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 20th paragraph and the facts stated therein, all of which were offered by said defendant and intervenors.

Said paragraph 19 is in words and figures as follows, to wit:

"That G. G. Kelly and B. W. Jauchius are the

owners of lands alleged in said complaint in intervention, as therein stated; that said G. G. Kelly is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States and a resident of the State of California." (Errors Assigned, *Record* pp. 443, 459.)

XIII.

Error in sustaining the objection of plaintiff to the introduction in evidence of a certified copy of the judgment roll in the matter of the Tulare Irrigation District. Said judgment roll is composed of documents in substance as follows:

(1) A petition by the Board of Directors of Tulare Irrigation District to the Superior Court of Tulare County, setting forth the various proceedings which had been taken with a view to the organization of the Tulare Irrigation District and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the Court.

(2) An order by the Superior Court of Tulare County reciting the filing of the above mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3) An affidavit by one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

(4) An affidavit of one Edward Oakford, Secretary

of the Board of Directors of Tulare Irrigation District, showing the posting of the notices of the hearing of said petition, in the various precincts of said district.

(5) The findings of fact and conclusions of law of said Superior Court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district; and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the Board of Directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds and the order for the sale of such bonds, are legal and valid and entitled to approval and confirmation, and that said Board of Directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6) The judgment of said Court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging, and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to

be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

(7) An answer by B. W. Jauchius, J. L. Gould, George C. Kelly and Ralph Jones, to the said petition in said confirmation proceeding. Said answer contains denials of the various allegations in said petition, and sets up the invalidity of the proceedings leading to the organization of the district and the invalidity of the proceedings leading up to the issuance of the bonds of said district, upon the various grounds specifically set forth in said answer, and prays that the approval and confirmation of the proceedings had by the Directors of said district as alleged in the petition be denied by the Court; that a decree may be had that said district was illegally organized and void: and that all the bonds issued by said district as set forth in the petition be declared void.

(8) The opinion of the Judge of the Superior Court stating the reasons relied upon by the Court for setting aside the decree of confirmation hereinabove mentioned, and for entering a decree declaring the district illegal.

(9) Findings of fact and conclusions of law, dated November 23, 1898. These findings set forth various defects in the proceedings leading to the organization of the district and in the proceedings leading to the

issuance of the bonds, and as conclusions of law from the facts thus found, the Court finds that the Tulare Irrigation District is not legally organized, is not a valid irrigation district, and that the proceedings of the Board of Directors in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000, are illegal and void, and that the order prescribing the form of such bonds and the order for the sale of such bonds to the amount of $200,000, are illegal and void, and that the petitioners in the confirmation proceeding are not entitled to a judgment approving and confirming the proceedings mentioned in their petition, and that the defendants are entitled to a judgment denying such confirmation and adjudging and decreeing that the proceedings had for the formation of such district, and all proceedings had since such formation, including the issue and sale of its bonds, are illegal and void.

(10) The judgment in said confirmation proceeding, dated November 23, 1898, adjudging that the Tulare Irrigation District never was and is not a duly or legally organized irrigation district; that all of the proceedings by which said district was organized are null and void; that all the proceedings taken by the Directors of the district for the purpose of the issue and sale of the bonds of said district to the amount of $500,000, are null and void, and that approval of the aforementioned proceedings is denied; and further adjudging and decreeing that the said district has never been, since its

attempted organization, and is not, a legally organized irrigation district, and had and has no power to issue or sell the bonds of said district, create indebtedness or perform any of the functions of an irrigation district. (Errors Assigned, *Record* pp. 443, 459.)

XIV.

The Court erred in denying the motion on the part of the defendant and intervenors to set aside and vacate the findings in favor of plaintiff, and to make and enter findings in favor of the defendant on the ground that there was no evidence whatever to justify the findings in favor of plaintiff. (Errors Assigned, *Record* pp. 446, 462.)

PART THIRD.

BRIEF OF ARGUMENT.

I.

THE ATTEMPTED ORGANIZATION OF THE TULARE IRRIGATION DISTRICT WAS A MERE NULLITY, BECAUSE OF FATAL DEFECTS IN THE PROCEEDINGS. THE BOARD OF SUPERVISORS OF TULARE COUNTY NEVER ACQUIRED JURISDICTION TO TAKE ANY ACTION UPON THE PETITION FOR ORGANIZATION BECAUSE THE NOTICE REQUIRED BY SECTION TWO OF THE WRIGHT ACT (STATS. 1887, p. 29) TO BE PUBLISHED WITH THE PETITION "STATING THE TIME OF THE MEETING" OF THE BOARD AT WHICH THE SAME WOULD BE PRESENTED, IS JURISDICTIONAL, AND IT WAS NEVER PUBLISHED.

The only notice published with the petition in the same column therewith, immediately following the petition, was in the words and figures following, to wit:

" Pursuant to the statute in such case made and pro-
" vided, notice is hereby given that the above and fore-
" going petition will be presented to the Board of Su-
" pervisors, in and for the County of Tulare, at their
" first regular meeting in the month of July, 1889, at
" which time any person or persons desiring so to do
" may present their objection, if any they have, why
" said petition should not be granted." (*Record* p. 253, 236, 300.)

The notice passed upon in the *Central Irrigation District case* (117 Cal. 382), like the one in the *Tulare*

case, was without date and without the signature of any petitioner and was in the following words and figures, to wit:

"The foregoing petition will be presented to the Hon-
" orable Board of Supervisors of Colusa County, Cali-
" fornia, on Monday, October 10th, 1887, at 10 o'clock
" A. M. of that day."

Upon a full review of the authorities, by the Supreme Court of California in the case of the *Central Irrigation District* (*supra*), such notice was held insufficient to vest jurisdiction in the Board of Supervisors to proceed on the petition for organization, because of the absence therefrom of the signature of the petitioners.

In *Doer* v. *Southwestern Mut. Life Assn.*, 60 N. W. Rep. 225 (s. c. 92 Ia. 39), it was contended by the respondent that what was claimed to be a notice of appeal, served and filed in the case, was void because it was without signature. The appellant claimed that the statute providing for the service and the filing of the notice, did not require the notice to be signed; that at most, the notice was defective; and that as the respondent had appeared in response thereto, and assigned the case on the merits, he had waived the defects, if any, in the notice. The Court said (p. 226):

" While the statute does not, in terms, require the
" notice to be signed, yet we think this is essential to
" its validity. It must purport to emanate from some
" one in order that the adverse party may be advised
" that it comes from a proper source. To be binding

" upon the appellant, it ought to be subscribed either " by himself or some one authorized to act for him. " Without such attestation the document is, in effect, " no more than a blank piece of paper. It is not a case " of defective notice, but of no notice. *Wade, Notice*, " Sec. 1209; *Larrabee* v. *Morrison*, 15 Minn. 196 (Cil. " 151); *Eaton* v. *Manitowoc Co.*, 42 Wis. 317. The plain- " tiff, through his attorneys, accepted service of the " paper upon him, and it is urged that he is now es- " topped from taking advantage of the objection. If " the defect was a mere irregularity, there would be " much force in this position; but as the notice is juris- " dictional, and cannot, as we shall hereafter show, be " waived by the parties, the contention is without merit " (*Larrabee* v. *Morrison*, *supra*)."

In the *Central case*, *supra*, speaking of the notice prescribed by the Wright Act, the Court said (p. 390):

" The publication of this notice is an essential pre- " requisite to conferring upon the Board of Supervisors " jurisdiction to proceed in the matter of the organiza- " tion. It is by the terms of the Act made mandatory " that such notice should be given. The notice when " given is the process by which property owners to be " affected are notified and given an opportunity to pre- " sent their objections to the Board of Supervisors. The " Board of Supervisors acts in the matter as a court of " special and limited jurisdiction."

See *Finch* v. *Tehama Co.*, 29 Cal. 453, 457;
Williams v. *Bergin*, 108 Cal. 166.

In the *Central case*, the Court said further (117 Cal. pp. 390–391):

" The act does not in express terms declare by whom " the notice is to be given, but it may be derived there- " from, by intendment as clear and explicit as though " express language had been used, that the petitioners " themselves are the persons, and the only persons em- " powered to perform and charged with the performance " of this duty. The petitioners are to present their " petition at a regular meeting of the board, and only " upon such presentation, after notice, does the board " acquire official knowledge of the proposition, with " power to act upon it. But, before such petition is " presented, it shall have been published for at least " two weeks. Clearly it is not for the Board of Super- " visors to cause the publication. Its functions do not " begin until after the publication has been completed. " The petitioners, then, and no others, are to give the " notice."

II.

THAT THE BOARD OF SUPERVISORS HAS ACQUIRED JURISDICTION TO PROCEED WITH THE ORGANIZATION PROCEEDINGS UPON THE PRESENTATION TO IT OF THE PETITION FOR ORGANIZATION, MUST APPEAR ON THE FACE OF ITS RECORD; AND CANNOT BE ALLOWED TO REST IN PAROLE TO BE ESTABLISHED IN ONE CASE AND DISPROVED IN ANOTHER.

Henning v. *Planter's Ins. Co.*, 28 Fed. Rep. 440, 443;
Montgomery v. *Merrill*, 36 Mich. 97; s. c. 25 Mich. 73;
cf. *LeRoy* v. *Jamison*, 3 Sawyer 369, 389.

The record of the board should show on its face that at the time it proceeded to act upon the petition proof was made to it by competent evidence that the notice had been given and published as required by the act.

Truax v. *Sterling*, 74 Mich. 160; s. c. 41 N. W. Rep. 885.

This must be so independent of the rule that the validity of the proceedings of the tribunals of special and limited jurisdiction must appear on the face of their records (*Armijo* v. *Board of Comr.*, 7 Pac. Rep. 19; s. c. 3 N. Mex. 297), where the tribunal is required by the law of its creation to keep a record of all its proceedings.

Johnson v. *Wakulla Co.*, 28 Fla. 720; s. c. 9 Southern Rep. 691;
Milton v. *Drain Comr.*, 40 Mich. 229.

In the *Florida case*, the Court, speaking of the county commissioners, said (9 So. Rep. 693):

"They * * * are clothed by law with numerous "important powers, quasi judicial and quasi legislative "* * * and even if they were not expressly required "by law to keep a record of their official acts and pro- "ceedings, we are decidedly of the opinion that the very "nature and importance of their official duties renders "it entirely indispensable that they should keep such "record, and with accuracy."

In *Milton* v. *Drain Comr.*, 40 Mich. 229, the Court, in speaking of the duty of special commissioners in the matter of the condemnation of land for ditch purposes, said (p. 231):

"It was not necessary that the statute should ex- "pressly direct what should be a matter of record and "how the record should be made up. The common "law applies and it determines that in all such pro- "ceedings which are quasi judicial every substantial "ingredient should be set down in *writing*."

In *Small* v. *Pennell*, 31 Maine 267, relating to certain proceedings for the location of a highway, the Court, in speaking of the county commissioners and in rejecting certain parole testimony offered, said (p. 272):

"The parole testimony is offered, not to prove a lost "record but as a substitute for the record itself. This "is inadmissible. The acts and doings of the com- "missioners must be manifested by their records, "which, if lost or destroyed, may be proved by parole "evidence. But it is not suggested that their records "have been lost. There is an omission to record what

" is essential in order to give validity to their acts."

In *Vestal* v. *Morris*, 39 Pac. Rep. 960 (s. c. 11 Wash. St. 960), was involved the validity of a tax deed; and it was held that where it was the duty of the county treasurer to give notice that the duplicate assessment roll was in his hands and of the date when the taxes must be paid, the county records must show that some notice was given, although there was no statute requiring proof of notice to be preserved.

The Court said (pp. 961–962):

"It was also imperative that the county treasurer " should give the notice required by the statute that " the duplicate assessment roll was in his hands, and " giving the date when the taxes must be paid. It is " contended by appellants that there was no statute " requiring the proof of the giving of this notice to be " preserved, and that the presumption is that the notice " was in fact given. But independent of any specific " provision of the statute, it was necessary that some " proof of the giving of the notice should be preserved " in the county records."

See *Doody* v. *Vaughn*, 7 Neb. 28, 29;
Bedell v. *Scott*, 126 Cal. 676.

In the minutes of the Board of Supervisors of July 1st, 1889, it is recited:

"And it satisfactorily appearing to this board that " due notice of the presentation of said petition has been " given, as required by law," etc. (*Record* p. 34.)

In its minutes of July 11th, 1889, it is *found* by the board:

"That after said petition was signed by said peti-
" tioners and before the same was presented to this
" board, as hereinafter stated, said petition together
" with a notice stating that said petition would be pre-
" sented to this board on Monday, the 1st day of July,
" 1889, was duly published for three weeks next before
" said 1st day of July, 1889, in the 'Weekly Tulare
" Register', a weekly newspaper printed and published in said Tulare County." (*Record* p. 255.)

The foregoing is all that appears with respect to the supposed publication of a notice of the time when said petition would be presented to the board. But the whole of it is insufficient.

Was the notice signed by any one?

Was it signed by all the petitioners or by a few only?

Who caused or directed the notice to be published with the petition?

Was the notice, and the petition as well, published by the Weekly Tulare Register, merely as a matter of news?

Who selected that paper for the publication?

No one of these questions is answered by the record.

It is the petitioners alone who can cause or direct the publication to be made. They have sole control

of the matter until the petition is presented to the board.

People v. *Town of Linden*, 107 Cal. 94, 98;
In re Central Irrigation Dist., 117 Cal. 382, 390, 391;
City of Napa v. *Easterby*, 61 Cal. 509–517, and cases there cited.

The petitioners had exclusive discretion in the selection of the newspaper for publication, and a publication in a newspaper not designated by them would be only a matter of news and a nullity as notice.

Powers Appeal, 29 Mich. 504, 508–509;
People v. *Board*, 49 Cal. 684;
People v. *Williams*, 64 Cal. 87, 92;
Moran v. *Darby*, 56 N. W. Rep. 347; s. c. 97 Mich. 186.

There is no logical connection between the fact of publication and the fact that the newspaper in which the notice is published, if designated, would have been a proper medium for the giving of the notice, from which the conclusion can be drawn either that the newspaper was designated or that some one legally authorized to do so directed the publication to be made in such newspaper.

Becker v. *Commissioners*, 11 Mont. 490; s. c. 28 Pac. Rep. 1116.

III.

THE CONCLUSIONS OF THE BOARD OF SUPERVISORS CONCERNING ANY JURISDICTIONAL FACT ARE OPEN TO ATTACK IN A COLLATERAL PROCEEDING; AND THUS, EVEN IF THE RECITALS OF NOTICE WERE NOT INSUFFICIENT, THEY COULD NOT PRECLUDE INQUIRY AS TO THEIR TRUTH.

A judicial tribunal cannot conclusively determine the existence of facts essential to its jurisdiction. It is permissible, even in a collateral action, to show the non-existence of any fact which is indispensable to the acquisition of jurisdiction, and we maintain that the better doctrine, and that which has been recognized as correct by this Court, is that the records of no tribunal can import such verity as to preclude a party whose rights are affected by a judgment from setting up and proving that the Court never obtained jurisdiction, and that the purported judgment is a nullity.

Ferguson v. *Crawford*, 70 N. Y. 253;
Beaudrias v. *Hogan*, 48 N. Y. Sup. 468;
Mastin v. *Gray*, 19 Kansas 458;
Goudy et al. v. *Hall*, 30 Ill. 109;
Thompson v. *Whitman* 18 Wall. 457;
Harris v. *Hardeman*, 14 How. (U. S.) 334;
Webster v. *Reid*, 11 How. (U. S.) 437.

A *fortiori*, it must be permissible, even in a collateral action, to prove the falsity of recitals, as to jurisdictional facts, appearing in the records of an inferior tribunal of special and limited jurisdiction.

"The general principle is that the proceedings of

" magistrates and officers having special and limited " jurisdiction, must bear on their face the evidence of " their jurisdiction or they will be judged invalid, and " that in collateral actions their judgment may be " questioned and disregarded, if it appears that in fact " they had no authority to act in a given case."

National Bank v. *City of Elmira*, 53 N. Y. 54.

This principle has been recognized and applied by this Court. In *Ogden City* v. *Armstrong*, 168 U. S. 224, it was held, that the finding of a city council concerning a fact upon which their jurisdiction depended, might be questioned collaterally. The jurisdictional question involved in that case was whether the assent of property owners to a certain street improvement had been obtained. It was argued that the city council acquired jurisdiction by publishing its notice of intention to make the improvement, and that it had authority to decide whether the requisite proportion of property holders had failed to protest. But the Court held (see page 235) that the fact of consent by the requisite number was jurisdictional and in the nature of a condition precedent to the exercise of the power in question, and that the finding of the council on this question was not conclusive as against those who duly protested.

The case of *Mulligan* v. *Smith*, 59 Cal. 206, is cited with approval (see 168 U. S. at p. 236). In that case it was held that no one can be concluded by the determination by a public board of a question upon which its

own jurisdiction depended.

In *Allen* v. *City of Portland*, 58 Pac. Rep. 509, it is held that, in a case where the filing of a petition signed by the requisite number of property holders is a condition precedent to the acquisition of jurisdiction by a city council to make a public improvement, the decision of the council as to whether such a petition has been filed is open to collateral attack. The principle is stated by the Court as follows (p. 512):

"The question as to its jurisdiction to act in any "given case, like courts of limited, special and inferior "jurisdiction, is always open to inquiry; and in any "event its decision or determination may be attacked "collaterally for lack of jurisdiction. It cannot legally "assume to act until the facts exist upon which its "jurisdiction depends, and no decision or determination "that it has it can avail in the absence of such facts."

In *Auditor-General* v. *Fisher*, 84 Mich. 128 (s. c. 47 N. W. Rep. 574), it was held that the question whether or not the requisite number of persons have signed a petition for the improvement of a street, when the power to make it depends upon the signatures to the petition of a given number or proportion of the property holders to be affected, can be inquired into, and the want of such number of signatures shown as a defense in an action to collect the assessment for such improvement, if the statute governing the proceeding does not provide that the determination of the proper

municipal board shall be conclusive on the subject.

See also

Kahn v. *Supervisors*, 79 Cal. 388;
People v. *Hagar*, 49 Cal. 232;
Lent v. *Tillson*, 72 Cal. 422;
In re Madera District, 92 Cal. 296;
Reclamation Dist. v. *Phillips*, 108 Cal. 306.

In the foregoing cases the jurisdictional fact in question related to some petition or other mode of consent on the part of parties affected by the proposed work or improvement. But the same principle which controls cases of this character must apply to cases involving such a jurisdictional defect as the failure to publish the notice of the petition for the formation of an irrigation district, as required by the Act of 1887. In the *Central case* (117 Cal. 382), it is held that until the petitioners have published their petition in the manner prescribed by the statute, the Board of Supervisors can acquire no jurisdiction whatever; that the publication is an indispensable condition precedent to any right or authority on the part of the board to take any steps whatever in the matter. It follows that the determination of the Board of Supervisors as to whether a proper notice has been published can no more be conclusive of the question, than can their decision as to whether the petition was such as the statute demands, be conclusive of that question. For the same reason and upon the same principle that the presentation to the supervisors of a document purporting to be a petition signed by parties

possessing the statutory qualifications is not enough to give the board jurisdiction to conclusively determine whether the petitioners do possess the qualifications, it must be true that the filing of a petition cannot be sufficient to give to the board authority to conclusively determine whether or not such a publication of the petition as is necessary to confer jurisdiction has been made. In one case just as much as in the other, to hold the determination of the supervisors conclusive would be to violate the rule that a tribunal of this kind cannot by its own decision as to facts upon which its jurisdiction depends shut off all collateral investigation of the question whether or not these facts exist.

In the *Falbrook case* (164 U. S. 112) this Court refers to the sufficiency of the petition as on the same footing as any other jurisdictional fact. It is said (p. 169) that

" It may be that the action of the board upon any " question of fact as to contents or sufficiency of the " petition, or upon any other fact of a jurisdictional " nature, is open to review in the state courts."

It is submitted that there is no reason for any difference between the effect of the decision of the supervisors as to the sufficiency of the petition, and the effect of their decision as to any other jurisdictional fact, such as, for example, the publication of notice of the hearing of the petition; and that, therefore, the case of *Ogden City* v. *Armstrong* (*supra*), is fully in point here, in support of the proposition that nothing in the records of the Board of Supervisors should be

allowed to prevent us from showing that, as a matter of fact, no notice of the hearing of the petition for the formation of the Tulare district, such as the law requires, was ever given.

IV.

THE FACT THAT THE SUPREME COURT OF CALIFORNIA IN THE CASE OF IRRIGATION CO. V. DELAPPE (79 CAL. 351) TREATED AS VALID PROCEEDINGS FOR THE FORMATION OF A DISTRICT, IN WHICH PROCEEDINGS THE SAME DEFECT IN THE NOTICE EXISTED AS THE DEFECT HERE RELIED UPON, CANNOT, IN THE CASE AT BAR, PRECLUDE THE PLAINTIFFS IN ERROR FROM RELYING UPON THIS DEFECT. THE POINT AS TO THE SUFFICIENCY OF THE NOTICE WAS NOT RAISED OR CONSIDERED IN THE DELAPPE CASE; AND AS TO THIS POINT THE DECISION WAS NOT A CONSTRUCTION OF THE STATUTE WITHIN THE SCOPE OF THE PRINCIPLE ESTABLISHED BY THIS COURT IN GELPCKE V. CITY OF DUBUQUE (1 WALL. 175) TO THE EFFECT THAT IF A CONTRACT WHEN MADE IS VALID BY THE LAWS OF THE STATE AS THEN CONSTRUED BY THE COURTS OF THE STATE, IT CANNOT BECOME INVALID BY REASON OF A SUBSEQUENT DECISION OF THE SAME COURT ADOPTING A DIFFERENT CONSTRUCTION.

The doctrine of the *Gelpcke case* is that in cases where the validity of a contract depends upon a State law, the rights of the parties to the contract must be determined according to the law as construed by the highest Court of the State at the time the contract was made. But it was

evidently not intended to treat a law as judicially construed as to a point which had never been presented to or considered by the courts. The points relating to the construction of the Iowa constitution which were treated by this Court in the *Gelpcke case* as settled by the decisions of the State Supreme Court, were all points which had been expressly and fully passed upon and discussed by that Court. And so in all the cases which follow this leading case, the judicial construction which is treated as the basis of rights that cannot be affected by subsequent decisions, is a construction actually made by the Court, and not something read into the opinion by mere implication, on the theory that when a court sustains a certain transaction, it impliedly declares it to be free from all possible objections, and in conformity to the law in every conceivable respect. But it cannot be that whenever a court chances to overlook some defective feature of a proceeding it must be understood as announcing by implication that the law is to be construed as tolerating this particular feature. No one is warranted in relying on a decision as an authority, except as to points which the court has considered. As to all points not presented or noticed the decision is silent and inoperative, and as to such matters, the law remains unconstrued. When the point is raised and decided in a later case, no question of a change of construction arises, for until the later decision, there is no construction of the law on the point in question.

In the *Central Irrigation District case* (117 Cal. 382), the decision in the *DeLappe case* was set up as a conclusive adjudication in favor of the validity of the bonds of the district. But the Court held that the decision was merely an adjudication that the propositions advanced in that case presented no valid legal objection to the organization of the district. "It "does not follow", says the Court (p. 388), "that "inquiry as to other matters is foreclosed, and that "the judgment in the *DeLappe case* is *res adjudicata* "upon questions not presented or considered in that "case. * * * "

In *Nickey* v. *The Stearns Ranchos Co.*, 126 Cal. 150, the Court held a statute to be unconstitutional although it had sustained the same statute in a prior case. The reason given for this course was thus stated in the opinion (153):

"We are not unmindful that this statute was "attacked in *Holly* v. *County of Orange*, 106 Cal. 420, "and that its constitutionality was there upheld; but "the points here presented were not in that case "raised or considered. That determination was a "decision, not generally as to the validity of the act, "but merely that it was valid against the specific "grounds of attack urged."

Alferitz v. *Borgwardt*, 126 Cal. 201, is a case which supports and illustrates the proposition that the scope of a decision cannot be extended by mere implication so as to make it an authority on points overlooked by

the Court. In that case it was held that a prior decision to the effect that a chattel mortgage passed the legal title to the mortgagee, could not be treated as a judicial determination that Section 2888 of the Civil Code of California was compatible with such a theory. The Court in the earlier case had overlooked this section of the Code, and thus had rendered a decision which implied that the Code was consistent with the view that a chattel mortgage vests the title to the property mortgaged in the mortgagee. It was argued that this amounted to a construction of Section 2888. But in response to this suggestion the Court said (p. 207): "No allusion is made to Section 2888, but it is con- "tended that such section was thereby construed to " mean exactly the opposite of its express and unambig- " uous declaration. Certainly it was not a construc- " tion, but a failure to note the statute."

In *Boyd* v. *Alabama*, 94 U. S. 645, a question arose as to the constitutionality of an act of the Legislature of Alabama authorizing certain named persons (among whom was Boyd, the plaintiff in error) to carry on certain enterprises, among which it was claimed by Boyd that the enterprise of selling lottery tickets was included. Boyd was indicted and prosecuted for selling these tickets. It was admitted that the acts with which he was charged came within the scope of the above mentioned statute, but it was contended that the act was unconstitutional. The Supreme Court of Alabama had previously decided that the statute constituted a

contract with Boyd and that the legislature could not repeal it. But in the later case the Court held the statute unconstitutional and, as such, not available to Boyd as a defense. The Supreme Court of the United States held that the earlier decisions of the State Supreme Court were not conclusive as to the constitutionality of the statute, since this question had not been raised or considered in these cases; and thus, although the earlier decisions had proceeded upon the theory that the statute constituted a valid contract, the later decision of the State Court, which held the reverse of this, was accepted by this Court as a correct exposition of the law, and this notwithstanding the fact that the plaintiff in error had relied upon the prior decisions as establishing the existence of a valid contract between him and the State.

In *Louisville & N. R. Co.* v. *Palmes*, 109 U. S. 244, this Court refused to follow a decision of the Supreme Court of Florida, which recognized and upheld the right of the Pensacola and Louisville Railroad Company to exemption from taxation, under an act of the legislature of Florida of February 4th, 1872, by which the State attempted to grant to the railroad exemption from taxation. According to the decision of the Florida Court (*Gonzales* v. *Sullivan*, 16 Fla. 791), the act of 1872 operated as a grant of the exemption to the above named railroad company; and for that reason it was held that the property of that company was exempt. Here then was a case where the State Court had con-

strued the grant as valid and operative; and on the faith of this decision the plaintiff in error, a successor in interest of the Pensacola and Louisville Company, acquired its title to the property of that Company. The Florida Court had held the grant of the exemption to the Pensacola and Louisville Company valid, and had also held that the exemption was annexed to the road itself and passed with it to a transferee. But when the case came before this Court it refused to follow the Florida decision, although recognizing that the decision was such that the plaintiff in error may have relied upon it when it purchased the property in question. This Court held that the Florida decision was not authoritative as to the validity of the grant of the exemption by the act of 1872, because the Court had not noticed or considered the question whether the constitution of Florida permitted such a grant. This question was treated as still open for consideration, although it was a question which the Florida Court *might* have passed upon had its attention been directed to it.

In *Keokuk & W. R. Co.* v. *County Court of Scotland County*, 41 Fed. 305, the Court announces the rule to be that a decision of the Supreme Court of a State cannot establish a rule of property, within the scope of the principle in the *Gelpcke case*, as to any question which was not raised or considered by the Court which rendered the decision. The Court said (p. 316):

" In the present case, however, it is clear that the

" decisions relied upon did not establish a settled rule " of property within the meaning of the doctrine in- " voked. In the case of *Scotland Co.* v. *Railroad Co.*, " *supra*, the Supreme Court of the State evidently did " not consider the question whether an exemption from " taxation passed to the consolidated company, because " it was not a controverted question in that Court. " The fact that the exemption was acquired by the con- " solidated company seems to have been taken for " granted * * * It is obvious that no questions " were considered in the *Secor* case except such as had " previously been considered by the Supreme Court of " the State.

" Under the circumstances it cannot be admitted that " the decisions in question established a settled rule of " property to which this Court, any more than the " State Court, is bound to adhere."

See also

Council of Anderson v. *Fowler*, 25 S. E. Rep. 900; *State* v. *Pugh*, 1 N. E. Rep. 439, 453.

In *Quaker City Bank* v. *Nolan County*, 59 Fed. 660, it was held that a decision of a State Supreme Court sustaining a statute which validates certain county bonds, and holding these bonds to be valid, is not controlling on a Federal Court, when it appears that the bonds were void for failure to comply with a provision of the State constitution, and therefore could not be validated by any statute, but that this point was not called to the attention of the State Court and its decision was

based on other grounds.

Applying the rule established by the foregoing authorities to the case at bar, it clearly appears that the decision in the *DeLappe case* cannot be regarded as having established the validity of a notice such as that which was involved both in that case and in the case at bar, and also in the *Central case*. The defect in question is the omission from the published notice of the names of the petitioners. In the *DeLappe case* this omission escaped the Court's attention. It is clear that the Court did not mean to adopt the view that the statute sanctioned a notice of this kind. And so when the point came up in the *Central case*, there was no question of overturning anything established by the *DeLappe case*. The Court simply construed the statute as to a matter concerning which the earlier case had left it unconstrued. This is the view taken by the Court which decided the *Central case*, and we submit that it is sound and correct; and further that the decision in the *Central case*, concerning the sufficiency of a notice such as that there under discussion, is correct and is fully sustained by the authorities cited. This being so, it ought to be followed by this Court; for here there is presented, not a case of an earlier decision which this Court regards as inherently sound, supplanted by a decision of which it disapproves as incorrect, as was the situation in the *Gelpcke case*, but, on the contrary, we have here a case of a later decision inherently right, dealing for the first time with a question,

which in the earlier decision, had been completely overlooked.

In this connection we call attention to the opinion in *Burgess* v. *Seligman*, 107 U. S. 20. On page 33 the following statement is found: "So when contracts and "transactions have been entered into, and rights "have accrued thereon under a particular state of the "decisions, or where there has been no decision, of the "State tribunals, the Federal Courts properly claim the "right to adopt their own interpretation of the "law applicable to the case, although a different inter-"pretation may be adopted by the State Courts after "such rights have accrued. But *even in such cases*, for "the sake of harmony and to avoid confusion, the Fed-"eral Courts will lean towards an agreement of views "with the State Courts if the question seems to them "balanced with doubt."

A fortiori, if the later decision of the State Court appears to this Court to be sound, it should be followed by this Court.

V.

THE ALLEGED FACT THAT THE TULARE IRRIGATION DISTRICT WAS A *de facto* CORPORATION CANNOT PRECLUDE THE LAND OWNERS FROM SETTING UP THE INVALIDITY OR THE ORGANIZATION PROCEEDING AS A DEFENSE TO AN ACTION FOR THE COLLECTION OF AMOUNTS ALLEGED TO BE DUE UPON THE PURPORTED BONDS OF THE DISTRICT.

THE LAND OWNERS, NEVER HAVING HAD THEIR DAY IN COURT, HAVE THEIR CONSTITUTIONAL RIGHT TO OBJECT TO THE CREATION OF ASSESSMENT LIENS OR OTHER INCUMBRANCES UPON THEIR LAND, BY SHOWING THAT THEY WERE NEVER AFFORDED AN OPPORTUNITY TO BE HEARD UPON THE QUESTION WHETHER OR NOT THEIR LANDS WOULD BE BENEFITED BY BEING INCLUDED WITHIN THE PROPOSED DISTRICT.

We do not, of course, dispute the general rule that the existence of a corporation, *bona fide* claiming to exist, can not be collaterally attacked; that for any irrregularity in its organization, the State only can interfere. As was said in *Shapleigh* v. *San Angelo*, 167 U. S. 646, a case cited in *Herring* v. *Modesto Irrigation District*, 95 Fed. 720, the doctrine applies to an *irregularly* organized corporation, which was obtained by compliance with a general law, an organization valid against everybody except the State acting by direct proceeding. The reason is given: "Such an organization is merely voidable, &c."

But we submit that the doctrine has and can have no sort of application to a case like this. So far as the

mere fact of corporate existence is concerned, it may be said that no one but the corporation and the State are interested. And so far as the defect set up consists only of an *irregularity*, it may be said the organization is only voidable and not void. So it is often said that a judgment cannot be collaterally attacked for mere irregularities—that it is voidable, not void. But was that ever thought to extend to even a solemn judgment *void*, as for want of jurisdiction? To such a case the rule in the *Shapleigh case* does not apply; but rather the doctrine there recognized that where even "a municipal " corporation is wholly void *ab initio*, as being created " without warrant of law, it could create no debts and " incur no liabilities" (167 U. S. p. 655). If this district was organized without compliance with the substantial conditions precedent prescribed by the statute, the organization was void *ab initio* and not merely voidable. This is the direct and necessary result of the decision in the *Central case*, reported in 117 Cal. 382. Otherwise, any set of usurpers, without pretending to give any sort of notice, might successfully organize an irrigation district, and before the State could intervene bankrupt the whole community they saw fit to include.

The objection to the application of the doctrine of collateral attack lies even deeper, and we submit, the fallacy in applying it arises from a failure to distinguish between cases where the irregularity consists only in a failure to do something which concerns only the organization of the corporation, and cases like this,

where it happens that the neglected step or act is also and at the same time, a prerequisite to the contracting of the liability sued on or the creation of the burden sought to be enforced. There may be cases where the legislature has seen fit to prescribe certain prerequisites to the formation of a corporation, which, however, it was not compelled to prescribe. In this case the legislature might have authorized the creation of an irrigation district without any previous notice. The corporation would have existed, but it would have been a very different corporation, and before it could impose the burdens here claimed to exist, there would have been necessary a further act of legislation providing for the very notice which our statute prescribed in the first instance. The distinction is well understood. In *N. Y. Cable Co.* v. *Mayor*, 104 N. Y. p. 43, the Court say, in answer to a claim that it had overlooked the point and authorities that the State alone could interpose, etc., that it did not deem it necessary to comment upon those authorities, "for the simple reason that it did not " deem them applicable to the case at bar. In order to " sustain proceedings by which a body claims to be a " corporation, and as such empowered to exercise the " right of eminent domain, and under that right " to take the property of a citizen, it is not " sufficient that it be a corporation *de facto*. " It must be a corporation *de jure*. Where it " is sought to take the property of an individual under " the powers granted by an act of the legislature to a

" corporation to be formed in a particular manner " therein directed, the constitutional protection of the " right of private property requires that the powers " granted by the legislature be strictly pursued, and " all the prescribed conditions be performed." This certainly seems a sensible and reasonable doctrine and distinction, and even to justify the statement of the Court of Appeals of New York that it was so much so that they did not feel called upon to elaborate it in their first opinion. It applies *a fortiori* here. While it is true that in every case where rights of private property are affected, all the steps required by the statute must be taken, it is especially and uncontrollably true when such steps are necessary *constitutional* prerequisites—steps which were not only required by the legislature to be taken, but which the legislature itself could not have dispensed with. The constitution looks at things, not names—at substance, not form. When it prohibits a thing, it prohibits every subterfuge or evasion, by which the thing, which cannot be directly done, is indirectly accomplished. Here the substantial thing is an assessment for benefits. The organization of the district is mere machinery to that end. The *constitution* requires that the fact that the property is benefited shall be ascertained after a hearing and upon notice. It *happens* that the statute blends the requirement of notice of the formation of the district or the organization of the corporation, which it might perhaps have dispensed with, with the requirement of notice of the

hearing on the question of benefits, without which the whole statute would have been unconstitutional and void. Can it be that in this way, by a mere fiction of corporate existence *de facto* or otherwise, the constitutional right to the notice and hearing can be gotten rid of and denied? Suppose this statute had not provided for the creation of any corporation at all, as perhaps, if the question were an open one, should be its construction. Suppose it had simply provided for the assessment by certain county officials, and had provided a similar hearing and notice on the question of benefits, would anyone contend that the assessment or a warrant or even bond issued on it, would stand, if the notice had not been given?

The case of *Reclamation District No. 537* v. *Burger*, 122 Cal. 442, is in point here. That was a suit by a reclamation district to collect an assessment, and the point was made that since the district was a corporation *de facto*, it was not permissible for the land owners to raise any question as to defects in the organization of the district. The defect alleged by the defendant was that the petition for the organization of the district was not signed by the owners of one-half of the acreage of the district, as the law requires. The Court took the position that the requirements of the law concerning the method of forming these districts cannot be evaded by the device of calling the district a corporation. It says, p. 443:

"The proceeding results in putting a burden upon

" property against the will of the owners, and the re-
" quirements as to proceedings of that character cannot
" be evaded by calling the governmental agency
" through which the proceeding is conducted a corpora-
" tion. As remarked in *People* v. *Reclamation Dist.*
" *551*, 117 Cal. 114, the proceeding greatly resembles
" those in which property is assessed for local improve-
" ments in proportion to benefits, and I see no reason
" why the same rules as to essential requirements
" should not apply. The Board of Supervisors is re-
" quired to inquire and determine whether the petition
" is sufficiently signed. So far as this depends upon
" a fact to be determined, their conclusion may be final
" as an adjudication, but the question is not whether
" the district has so acted as to constitute a corporation
" *de facto*. (*Lower Kings River etc. Dist.* v. *Phillips*,
" 108 Cal. 306.) If, upon due notice and a petition
" sufficient in form, the parties have been afforded an
" opportunity to be heard before a competent tribunal,
" they have had due process according to the law of the
" land, and are concluded. They cannot be deprived
" of their property without such hearing, or opportu-
" nity to be heard, by proof of the existence of a corpo-
" ration *de facto*. There must have been in fact, a sub-
" stantial compliance with the law."

In *Payson* v. *People*, 175 Ill. 297, 51, N. E. Rep. 588, an owner of lands embraced in a drainage district objected to the entry of judgment on a delinquent assessment upon the land, on the ground that he had not been

given the notice which the statute prescribed as a prerequisite to the inclusion of the lands within the district. It was contended that this amounted to a collateral attack upon a *de facto* corporation, and was therefore not allowable; but the Court disposed of the contention as follows:

"All the cases above cited as sustaining appellee's "contention are distinguishable from this case. The "statute required that notice should be given the "plaintiff before a right existed to levy the special "assessment against his land. Only after due notice "to him, as required by the statute, can his land be "brought into the district, and made subject to the "special assessment. To hold that a land owner may "be subject to such an assessment without any notice "given or attempted, and without an appearance, would "be against every principle of justice and right. The "right to levy a tax by which one may be deprived of "his property exists by virtue of the statute alone, "which must be strictly followed. Appellant's denial "of the right to levy this tax is not a denial of the ex-"istence of a *de facto* corporation, but is a denial of the "right to subject his land to the payment of any tax "levied as a special assessment without notice to him, "as the land owner, of the organization of the dis-"trict."

In the case of *Bradley* v. *Fallbrook*, 68 Fed. 948, the case before Judge Ross, was one where bonds had been voted and an assessment levied and Bradley's property

sold for an assssmenet. The suit was to enjoin the execution of a deed. Judge Ross held that the statute was unconstitutional, because, as he construed it, it did not provide for notice and a hearing on the question of the truth and sufficiency of the petition. He held that the fact that bonds have been issued and sold, &c., could not justify him in failing to declare invalid legislation violating those principles of the constitution which protect the private property of every person against forcible taking without due process of law and for any other than a lawful purpose. (68 Fed. p. 966.) He was reversed by the Supreme Court (*Fallbrook, &c.*, v. *Bradley*, 164 U. S. 112), but only because this Court differed with him on the construction of the statute, as providing for due notice and a full hearing. It is perfectly manifest from reading Judge Ross' opinion and that of the Supreme Court, that the question of the immunity of the district from collateral attack, as a *de facto* corporation, had and could have no applicability or bearing. If the Supreme Court had coincided with Judge Ross as to the construction of the Act, they would, as appears from their opinion, inevitably have agreed with him as to the proper judgment to be rendered, irrespective of the *de facto* existence of the corporation.

By a perfect parity of reasoning, if Judge Ross had placed the same construction upon the statute which the Supreme Court gave to it; and had it appeared to him that the notice provided by the statute had in fact

not been given, his conclusion would and must have been the same and would have been affirmed.

Where notice is essential, not only must the statute provide for it, but it must be given. This is illustrated by countless cases. The notice in such case is jurisdictional and fundamental in the highest sense of those terms. There can be no substitute for it, least of all the notional fiction of a *de facto* corporation. To hold otherwise is to say that the mere usurpation of a function is the equivalent of its rightful exercise.

But the very point was made in the Supreme Court and disposed of in accordance with our contention. Mr. Choate (164 U. S. p. 184) evidently in answer to this same contention about collateral attack on a *de facto* corporation, *argued:* "Nor is the contention of the "Supreme Court of California aided by calling the "unique entity, brought into existence by this statute, "under the name of Irrigation District, a public cor-"poration, etc." And again on page 149 and on page 148, he replies to the argument of Justice Harrison in the Madera case. In all this he was simply combating this same idea of juggling the property owner out of his constitutional rights by the device of providing for a corporation, and substituting its *de facto* existence for due process—of confounding the right to create a corporation, with the right to take property without notice, etc.

The Supreme Court, in dealing with this question, thus squarely put before it, did not hold that the *de*

facto existence of the district precluded the objection for want of notice; but sharply and plainly drew the distinction for which we are contending. They said (p 174):

" There is nothing in the essential nature of such a " corporation, *so far as its creation only is concerned*, " which requires notice to or hearing of the parties " included therein before it can be formed * * * " In the act under consideration, however, the estab- " lishment of its boundaries and the purpose for which " the district is created, if it be finally organized " * * * will almost necessarily be followed by and " result in an assessment upon all the lands included " * * * When, as in this case, the determination of " the question of what lands shall be included in the " district is only to be decided after a decision as to " what lands described in the petition will be benefited, " and the decision of that question is submitted to some " tribunal (the Board of Supervisors in this case) the " parties whose lands are thus included in the petition " *are entitled to a hearing upon the question of benefits* " * * * Unless the legislature decide the question " of benefits itself, the land owner has a right to be " heard upon that question before his property can be " taken * * * Such a hearing upon notice is duly " provided for in this act."

(p 167): " The legislature not having itself de- " scribed the district has not decided that any " particular land would or could possibly be benefited

ERRATA (page 213).

The sentence beginning on page 213, on the eighth line from the bottom of the page, should read as follows:

In such cases it is most emphatically not a question between the state and the corporation; but a vital question between the individual whose property is affected or sought to be taken and those claiming the right to take or affect it.

" as described, and therefore it would be necessary *to* " give a hearing at some time to those interested upon " the question of fact whether or not the land of any " owner, which was intended to be included, would be " benefited, etc."

The Court then goes into an elaborate consideration of the question whether the statute did provide for this notice and hearing and concluded that it did, solely by reason of the very provision for a notice in the nature of a summons discussed and held essential in the *Central case* in 117 Cal.

Now, on the supposition that the doctrine of collateral attack on a *de facto* corporation was applicable, all this was idle and futile labor, and useless verbiage. Had the Supreme Court adopted Justice Harrison's views and applied them, it would have been of no consequence whether notice was provided for and given, or not. On the contrary they squarely decided that the distinction is between ordinary cases involving only the question of the creation of a corporation, and exceptional cases like this where the parties are entitled, *as a constitutional right*, to notice and hearing. In such cases it is most emphatically not a question between the individual whose property is affected or sought to be taken and those claiming the right to take or affect it. A constitutional guaranty secured by the constitution of the United States, which the State can in no way, either by action or non-action, impair, and which he can always assert whenever attacked,

collaterally or in any other way. The most solemn judgment of a Court of record, rendered either under a statute not providing for notice, or without the notice, if one is provided for, is a mere nullity, and can be shown to be such collaterally. Surely, the *ex parte* action of a special board like this, can have no higher sanction. In showing, then, that due notice was not given of the presentation of the petition for the organization of the district, we do not within the rule collaterally attack the organization or existence of a *de facto* corporation. We simply show that our land is attempted to be taken without due process of law—without the notice to which the Supreme Court has decided we were entitled as a matter of constitutional right under the constitution of the United States. A judgment for the plaintiff is in effect and reality a judgment enforcing upon our lands a lien, which the Supreme Court says cannot be created without notice, without allowing us to show that no such notice was given. From all the discussion before Judge Ross and in and before the Supreme Court, it appears that the only pretence of notice or hearing on the question whether the land was benefited, was that afforded in and by the section construed in the *Central case* in 117 Cal. If not had then, it could never be had, and the opinion in the *Central case* is a clear and irrefutable demonstration, both on principle and authority, that the notice called for was not given in this case. Evidently, from the opinion of the Supreme Court, if this notice had not been pro-

vided for in the statute, Judge Ross' decision would have been affirmed and the enforcement of the assessment enjoined. Is it possible that a different conclusion could have been reached, if the notice, though provided for, had not in fact been given?

Suppose the statutory notice had been given, and yet when in obedience to it, we appeared, the board had struck out our appearance, and without any hearing had organized the district! We certainly could show that fact (even though it involved a collateral attack upon the organization of the district) within the principle of *Windsor* v. *McVeigh*, 93 U. S. (3 Otto) 274. *A fortiori*, we may show that no notice was given or the legal notice was not given.

By the framework of this statute, as interpreted by this Court, the very organization of this district involves more than the mere creation of a corporation. *Ipso facto*, it is the subjecting of the property included to burdens, which cannot be imposed without notice and hearing. In and of itself and intrinsically it is a decision and determination of the question of benefits; and a final and irrevocable determination. We submit that to say that this can be done without the notice required by the statute is in the very teeth of the decision of this Court in the *Fallbrook case*.

Such a corporation, under *such* a statute, is in the language of some of the cases already cited "wholly void *ab initio*, as being created without warrant of law". We submit with all deference that it is not merely

voidable, but, by all the authorities, is void in the extreme sense of the term. As void as was the proceeding in *Windsor* v. *McVeigh*, and for the same reasons. To hold it other, is to amend our constitutional law, so as to make it say, *not* that property shall not be assessed for benefits without notice and hearing; but that it shall not be so assessed *except* in cases where the assessment is made by means of creating a corporation for that purpose.

The cases where a municipal corporation *de facto* has issued bonds and performed other acts which *if de jure* it is authorized to do, are clearly distinguishable. In such cases no constitutional right of hearing is violated, and the corporation, even if *de jure*, could only assess property for benefits after notice and hearing. Such might be this case if this statute had provided independently for the formation of irrigation districts, and the legislature then had passed another statute empowering them after notice given and hearing had, to determine benefits, assess, &c. But where the whole matter is indistinguishably blended as here, the only answer to the contention of Mr. Choate must be found in the distinction recognized by this Court in the *Fallbrook case*.

VI.

THE DECREE IN THE CONFIRMATION PROCEEDING CANNOT SO OPERATE AS TO PREVENT US FROM SHOWING AS A DEFENSE IN THIS ACTION, THE FATAL DEFECT IN THE PROCEEDING BY WHICH IT WAS ATTEMPTED TO ORGANIZE THE DISTRICT. TO MAKE SUCH A DECREE CONCLUSIVE, UPON SUCH MATTERS, WOULD BE TO DEPRIVE THE LAND OWNERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

If we are right so far, we submit that it follows that the so-called confirmation decree cannot aid or cure the fatal defect in these proceedings; or, in anyway estop or prevent us from setting it up in defense, collaterally or otherwise.

At the time of the institution of the confirmation proceedings, there existed a claim on the part of those pretending to be the officials of the alleged district, that our property had been lawfully subjected to their jurisdiction and that it had been duly and legally and by due process of law declared to be *benefited.* This claim when controverted, constituted and became a question of law and of fact, as to which neither party could be concluded except by the judgment of a court of competent jurisdiction, *proceeding*, in the language of Justice Field in *Windsor* v. *McVeigh*, "*after acquir-*" *ing jurisdiction*, according to the established modes " governing the class to which the case belongs."

See also *Western Union* v. *Mygatt*, 98 Fed. pp. 354 and 355.

At that time matters had passed the stage of *legislative* action looking to the determination in advance of the question of benefit, which Justice Peckham said in the *Fallbrook case*, the legislature, by *legislative* act could either determine itself, or which it could delegate to the Board of Supervisors. And so as to the question of notice, that remained and was *purely* a judicial question, which could not, on the principles laid down in *Western Union* v. *Mygatt* and other cases, be precluded by any legislative action. The principles governing the exercise of the taxing powers, and the assessment of property for benefits and the like no longer applied; and so far as the question of notice and kindred questions were concerned, the matter, as between the land owners and all asserting rights against or over their property, by virtue of proceedings already taken under the statute, stood just as any controverted question or dispute stands between parties to ordinary controversies, or who set up conflicting or opposing rights to property. With this question of notice and benefits, the legislature could deal only subject to the same constitutional restrictions and according to the same principles, that it could deal with a question between any two private parties or individuals and requiring for its determination the solution of controverted questions of law and fact. For example, the question whether the liability of an endorser of a note had been fixed by notice of non-payment and demand; or the question whether the stockholders of a mining corporation could

contest the validity of a mortgage executed without their assent as required by law. What would be thought of a statute authorizing the directors of such a company to publish a notice in a newspaper that on a certain day they would ask the Superior Court to enter a decree to be binding on all the world, declaring such a mortgage valid, and making such a decree a finality? Or of a statute providing for just such a procedure as this to determine, as against all creditors, the validity of liens alleged to have been fraudulently created by corporations or individuals? Could the legislature, after having provided a constitutional procedure for the exercise of the right of eminent domain, of course including notice and hearing, provide, after the fact, for such an omnibus and compendious method of finally adjudicating all judicial questions which had arisen? If some corporation claims to have acquired a right to take my land, where is the warrant or necessity for such unprecedented, harsh and rigorous method of settling any dispute between us as to the compliance with the law? And so in any and every case of disputed questions as to the validity of titles or liens to property, no matter how numerous the claimants, is there any valid precedent for an attempt to allow a Court to decree and adjudge without making all to be affected parties to the suit?

In the *Fallbrook case* Mr. Choate argued: "The "audacious claim is made on the part of the upholders "of the system that the mere right of being heard

" each on the *value of his own land*, without more and " without any right to be heard on the total cost of the " proportional burden which he is to bear, or the " benefit which he is to receive, is sufficient to uphold " the act.

"In answer to this objection, or rather in answer to " the more limited objection that the act makes no " provision for a hearing to be granted to the owners " of the land prior to the organization of the district, " it is claimed by Mr. Justice Harrison, in his opinion " in the *Madera case* (92 Cal. 323), that the proceeding " up to that point is merely for the creation of a public " corporation, which is to be invested with certain " political duties which it is to exercise in behalf of the " state. He claims that it has never been held that the " inhabitants of a district are entitled to notice and " hearing upon a proposition to submit such a question " to a popular vote; that it would be competent for the " legislature to enact it without such a submission; and " that it has as much power to create the district in " accordance with the will of a majority of the electors.

"We care not by what name the legal entity created " by the act may be called, whether a public or a quasi " or semi-quasi, or, as it has been called by one learned " Judge, a bastard public-private corporation, but we do " deny most emphatically that the function with which " it is invested, the duties which it is to discharge, are " in any manner political duties to be exercised in be- " half of the state.

"It is nothing more or less than a service to be ren-
" dered to the land-owners of the district for their own
" account without any intervention or interest of the
" public. It is for these land-owners that the directors
" are to procure and furnish the water for use or for
" sale. It is for them and at their expense that they
" are to issue the bonds. It is for them that the direc-
" tors are to mortgage the property acquired and to con-
" stitute the plant of irrigation works. There is nothing
" public about it; and if there is any force in the points
" we have already presented, there is no force in this
" contention of that learned Judge.

"But he further claims, in respect to the same limited
" objection, that the proceeding for the organization of
" the district *does not affect the property of any one*
" *within the district*, and that no one is by virtue
" thereof deprived of any property. Such result, he
" continues, does not arise until after delinquency on
" his part in the payment of an assessment that may
" be levied upon his property, before which time he has
" opportunity to be heard as to the correctness of the
" valuation which is placed upon his property and is
" made a basis of his assessment.

"Mr. Justice Harrison's statement concludes with the
" hackneyed phrase that the land-owner's property is
" not taken from him without due process of law if he
" is allowed 'a hearing at any time before the lien of
" the assessment thereon becomes final'.

"That is undoubtedly an excellent statement of the

" law, as it has been used by this Court and other courts " in reference to a hearing on the actual merits of the " assessment.

"But as has been well observed by Ross, C. J., in his " opinion in the *Fallbrook case*, the hearing at any time " before the lien of the assessment becomes final must " be a hearing on the *substantial merits* of the question " involved, and not a mere formality or a mere question " of valuation. It cannot fairly be said that the pro- " ceeding for the *formation* of the district from the " filing of the petition to the recording of the vote of " the first election, and the declaration that a district is " organized, do not affect the property of the land- " owners within the district. It is true that that is not " the final step by which they are deprived of their " property, but it is a step which is irrevocable when " taken, and which leads necessarily to the infliction of " the assessment, subject only to the majority vote of " the electors of the district on the question of bonds. " For the directors have no discretion after the organ- " ization is complete, but must immediately proceed " with their estimate, must call the election to determine " whether bonds to the amount of the estimate shall " issue, and once bonds are voted, must use the pro- " ceeds of such bonds in the construction of the system " of irrigation works adopted, must levy and collect an " annual assessment to pay the interest and finally the " principle of the bonds. If the amount of the bonds " voted proves insufficient to complete the works, and

" additional bonds be not voted, they must raise a suffi-
" cient amount to complete the works by the levy of
" direct assessments.

" It is the necessary effect of the act that all these
" things shall proceed as a direct consequence of a com-
" pletion of the organization of the district. It is the
" organization of the district which brings into exist-
" ence the power to entail all these burdens upon the
" property within it. Until the organization no such
" power exists. Once organized, it moves irresistibly
" against any effort of the individual land owner to
" stay its course. The mere existence of the district is
" thus a cloud upon the title of the land-holders and
" inevitably charges them with the cost of whatever
" debt may be incurred whether the bonds are already
" issued or not. So it is not sound reasoning to claim,
" as Mr. Justice Harrison does, that the landholder's
" property is not affected by the organization of the
" district.

" The Supreme Court of California has very recently
" said:

" 'The petition is the initial and jurisdictional point;
" 'and when that has been passed, landowner's as such
" 'have no more power in the premises. *Fallbrook Dist.*
" 'v. *Abila*, 106 Cal. 355, 364 (March, 1895).'"

Mr. Maxwell argued that by the decisions of the Supreme Court of California, no landowner could in any judicial proceeding attack the organization of an irriga-

tion district even though it be void; and that therefore the land owner is deprived of a hearing in violation of the federal constitution. As we have already pointed out, it is evident from the opinion of this Court delivered through Justice Peckham, that the Court affirmed the contention of Messrs. Choate and Maxwell, with the exception that it was held that there was notice and hearing, and therein necessarily and impliedly held that the decisions of the State Court invoked by Mr. Maxwell were unsound; and that, therefore, his conclusion that due process was denied did not follow. They also held that the determination of the question whether the lands were benefited was a *legislative* one, in so far as that the legislature itself might pass upon it, or might delegate its determination to a legislative or administrative body designated by it for that purpose. And while it was held that such body must proceed after notice and upon hearing, it was not held that such hearing must be in the ordinary course of judicial procedure, before the ordinary courts of justice. In other words, as to these preliminary, legislative proceedings, due process of law does not necessarily involve all the forms attendant upon the ordinary administration of justice in the courts. These or some of them may be dispensed with by the legislature; but the notice itself being a constitutional right cannot be dispensed with. And whether the notice has or has not been given, is strictly a judicial question. Thus in the case from 98 Fed., *supra*, it was held that the

attempt to create the Court of visitation was repugnant to the *federal* constitution. The legislature may authorize a board to fix freights and fares; but it cannot authorize the same board to sit as a Court of Justice and finally determine the judicial questions arising upon an asserted procedure under the statute.

So the legislature could not empower the Board of Supervisors conclusively to determine the question whether due notice had been given, though if such notice was given, it might make their decision on the question whether the lands were benefited conclusive, and for the same reason and upon the same principle that the legislature cannot make the decisions of a board like a Railroad Commission, conclude the judicial question of the reasonableness of the rates fixed by them. Evidently also, and this bears upon what was decided and said in the *Tregea case*, this Court in the *Fallbrook case* (164 U. S. 175) clearly traced the boundary between what the legislature may and may not make conclusive evidence or determination, to wit, so far as the mere creation of a corporation is concerned, it may prescribe at will what shall be conclusive evidence of its due organization; but, practically adopting that part of Mr. Choate's argument, that in a case like this, it cannot so conclude the question of benefits or any other constitutional and therefore judicial question. There is a wide and manifest difference between the question of benefit and the question of notice. One is legislative and the other judicial. And while the

kind of notice of the hearing on the question of benefit may be such as was here prescribed, the kind of notice requisite for a determination of the judicial question whether notice was given, is that customary and required in ordinary judicial proceedings *inter partes*.

Thus no one would contend now-a-days that the legislature can pass a statute making a tax deed conclusive evidence of matters vitally essential to the exercise of the taxing power. Such a statute would be simply void.

25 Am. & Eng. Ency., p. 698;
Marx v. *Hanthorn*, 148 U. S. 172;
Ramish v. *Hartwell*, 126 Cal. 443.

See also *Lufkin* v. *Galveston*, 73 Tex. 340, where it is said: "The constitution limits the power of the legislature to declare the conclusive effect of a tax deed. "As to these facts which must exist in order to call "into exercise the power of the officer to make the "sale—the facts essential to give him jurisdiction over "the property—*an inquiry into the courts of the country "cannot be precluded.*"

Now, then, after the formation of a district, even if it be formed without giving any notice, the very idea of its existence at all, even *de facto*, presupposes the segregation of a definite tract of land, and the ascertainment of a fixed body of land owners who are to bear the burdens to be imposed. In such case there is and can be no necessity for dispensing with the usual and approved methods of litigating any disputed judi-

cial questions which may arise, or for devising any novel or dangerous substitutes for the ordinary process to bring all necessary parties into Court.

The contention, as we understand it, is that this confirmation decree binds all the landowners and estops them from setting up any defense growing out of matters anterior to the decree. If we are right on the point of collateral attack on the existence of the corporation, then at the time of the inception of the confirmation proceedings, unless the decision in the *Central case* (117 Cal.) is to be overruled or disregarded, as to the landowners there was no corporation at all. At any rate there was no corporation which had any legal right to bind the landowners or the land, or to affect it in any way. There was no determination that the land was benefited, and the ownership and title of and to the land remained utterly unaffected by any of the proceedings attempted. The so-called corporation had no vestige of right or authority to bind the landowners or the land in any way, either in Court or in pais; and no right to appear for or represent or bind them in any Court or in any proceeding. If the judgment in the confirmation suit does not bind the land or the landowners, then there is nothing to bind them or it, or to justify any judgment in the present action affecting them or it. Even if the Circuit Court had jurisdiction to enter an ordinary judgment against the corporation only, instead of taking jurisdiction only, as it were, as ancillary to and the foundation of a mandamus, it

should not do so if it appears, as we contend, that such judgment would be a mere form or futility, by reason of a perfect defense to the mandamus. The only result would be to postpone the decision of a vital question till the mandamus is tried. And if such judgment would be conclusive in the mandamus, then, of course, the defense, if valid, must now prevail.

Now, previous to the *Tregea case*, 164 U. S. 179, the Supreme Court of California had held that these confirmation proceedings were proceedings *in rem*, and that the decree concluded *the whole world* upon all the questions involved, including, we take it, this question of notice.

People v. *Linda Vista*, 128 Cal. 477.

But in the *Tregea case* the Supreme Court of the United States totally dissented from this view. Such is evidently the view taken of the *Tregea case* by the Supreme Court of California in the *Linda Vista case*. They say, "The construction given the Act by the "highest Court in the land is one new to this Court", and that such construction, that is, that it was only to secure evidence, is contrary to the intention of our legislature. And further, that as construed by the Supreme Court of the United States, the statute admits of grave doubts as to its constitutionality, whether the decree be held *conclusive*, or only *prima facie* evidence.

So far, we submit, the California Court is obviously right, but, we also submit that they are obviously wrong when they undertake to say that they had a

right to disregard the decision in the *Tregea case*, on the ground that it was their right and duty to construe the statutes of California according to their own light; and it was immaterial whether the Federal Courts should follow the State Court in this matter. In the *Tregea case* it was unanimously held that the case presented a federal question. The case presents the question whether this confirmation act, construed as the Supreme Court of California construed it, deprived the parties of property without due process of law. There were two ways to dispose of it. One, that suggested by the dissenting justices, to follow the construction of the California Court; and thereupon to hold either that, so construed, the statute was or was not in violation of the federal constitution. The other, that adopted, was to dissent from the construction of the California Court, and to hold that the statute did not provide for a judicial proceeding *in rem*, or for any binding judicial determination; but was simply an exercise of *legislative* power—a mere proceeding to obtain evidence. Like statutes, making it the duty of an auditor, or other ministerial officer, to examine and certify proceedings—a proceeding by the State to secure evidence "of the regularity of the proceedings of its municipal corporations". Now, upon what possible line of reasoning can it be said that the construction of the statute thus given to it by the Supreme Court of the United States is any less binding than its construction would have been if it had construed it in any other

way, or had reversed the judgment instead of dismissing the case?

A federal question being involved, this Court felt compelled to and did construe the statute, and such construction *must* be followed by all other Courts. If this Court had not so believed; if it had given any heed to the suggestion that it must follow the State Court, the decision would have been different.

The decision, then, amounts to a decision that the State Court must follow, and not the Federal Courts. More, it is really a *decision* that the confirmation decree is not binding or conclusive on the landowners or the land, if on anyone. Because, if this Court had held that the landowners or the land were bound conclusively by the decree, it could not have dismissed the writ of error. How could it? If the proceeding was a judicial proceeding *in rem* binding on all the world, and if a federal question was presented, the Court was bound to decide that question, and could not dismiss the case.

The majority evidently held that the proceeding was not judicial at all, but rather executive (164 U. S., p. 189); that whatever its form, it was a mere *ex parte* case; that (p. 188) as it could not bind the bondholder, so for lack of mutuality it cannot bind the landowner; that it is doubtful if it really binds anybody. (P. 187.)

Now, then, is it conceivable that the same Court, which had just decided in the *Fallbrook case* that the landowners had a constitutional right to notice and

hearing, decided in the next breath in the *Tregea case* that they could be concluded by "a mere *ex parte* case" on the vital question whether they had been deprived of such constitutional right?

The expression in the majority opinion, that the Court was not concerned with the State measures to secure evidence of the regularity of the proceedings of its municipal corporations, and that it may authorize an auditor or other official to give a conclusive certificate of regularity, must be interpreted in the light of the opinion in the *Fallbrook case*; and so interpreted, it is easy to harmonize both cases without making one contradict the other, as must be if we interpret the *Tregea case* as holding that the State, which cannot deny notice and hearing on the question of benefit, can deprive the party of it by the simple device of authorizing a ministerial or executive offieer to supply the want of it by an *ex parte* certificate falsely stating that it was given. As well might you say that a statute might be passed authorizing a notary public to make a conclusive certificate of notice to charge an endorser; or that a married woman he never saw had acknowledged a deed; or giving such effect to the certificate of the Justice of the Peace or other officer or board to the effect that in a condemnation proceeding due notice had been given, or compensation adjusted and adjudged or actually paid.

There is no real or substantial difference between holding that the decree or certificate is conclusive as *evidence*, and holding it conclusive as *res adjudicata*, as

did the Supreme Court of California, so far as the constitutional right and question here involved and presented is concerned. Chief Justice Fuller and Justice Field dissented in the *Fallbrook case.* They concurred in the *Tregea case.* Certainly they would not have assented to any opinion which could fairly be construed as holding that this confirmation act could legally make the decree conclusive evidence of notice and benefit. Justice Peckham clearly drew the distinction between the mere creation of municipal corporations and fixing the liability of the land owners, the question of benefit, &c. Did he agree by concurring in the *Tregea case*, that the constitutional right to notice and hearing he had so ably indicated, was such a shadowy and futile thing that it could be wiped out by an *ex parte* certificate; or did he construe the opinion in the *Tregea case* as simply carrying out the same distinction that the statute might provide for conclusive evidence of such things as required no notice and hearing, such as the organization of corporations as such, and the regularity of their proceedings so far as no constitutional rights were involved?

The minority Justices in the *Tregea case* held that the confirmation decree would be conclusive and therefore the case must be determined on its merits. The majority must have dissented from the proposition that the decree would have been conclusive or they would have assented to the corollary. They certainly could not have thought it material that it could only be conclus-

ive as evidence. In no other way could such a judgment ever be conclusive. It might as well be said that a judgment quieting title rendered without due notice would not be reversed, or a judgment establishing marriage or heirship and the like.

What did the California Supreme Court mean in the *Linda Vista case*, by saying that in the *Tregea case*, " much is said tending to weaken the force and vitality " of the confirmation act as an act providing for judicial " procedure and judgment", and that it is badly *maimed* by the decision in the *Tregea case*?

If the decree is still conclusive on all points, how is the force and vitality of the act weakened or how is the act maimed? The answer is plain, and shows that the California Court has correctly understood the force and effect of the Tregea decision, and only erred in refusing to follow it. It weakens the act only in so far as it relegates the confirmation to its proper and only legitimate function and gives to the decree its only proper and legitimate effect as an instrument of evidence. Evidence not made conclusive by the terms of the statute and only to be held conclusive by a construction repudiated by the Supreme Court of the United States, and which, by treating the proceedings as judicial and the decree as a judgment, imports conclusiveness as *res adjudicata*.

As evidence merely, the decree can only be *prima facie* unless the statute in terms makes it conclusive. And even if the statute had in terms purported to

make it conclusive evidence, it could be operative, in that respect, only, in so far as the legislature by legislative act, could make evidence conclusive. And that we have seen does not extend to the foreclosing of fundamental, essential and constitutional rights, nor to the failure to comply with requisites, with the compliance with which the legislature could not have dispensed in advance.

But, even if we could follow the construction of the Supreme Court of California, and reject and hold for naught that of the Supreme Court of the United States, in dealing with this very statute, the result must be the same. The statute on that construction is unconstitutional.

The proceeding is in no sense a proceeding *in rem*. It provides for the decision and adjudication of questions of law and fact *inter partes*. And there is no warrant in principle or upon authority for such an attempt to provide a special mode of determining such issues; or for assuming to make a judgment final and binding on any but those made parties to the record, and who have been duly served.

It is not and never was the law, at least in proceedings to adjudicate controverted questions between parties, in which the State has no interest or concern, that service by publication or posting is sufficient to constitute due process of the law.

Known residents must be served personally and according to the course of the common law.

In *Webster* v. *Reid*, 11 How. 437, a case which so far as we can ascertain has never been doubted or qualified, the Supreme Court of the United States decided this question.

There, as here, the legislature undertook to provide, in order to settle the validity of the title to a large tract of land, for service by publication, and for proceedings in which the parties sought to be bound should not be made parties to the suit, except by a general designation as "owners of the half-breed lands, "etc." The Court said: "This was an extraordinary "procedure from its commencement * * * by the act "under which the suits were instituted, no other desig- "nation of the defendants was required than 'owners of "'the half-breed lands lying in Lee county'. These "suits were not a proceeding *in rem* against the land, "but were *in personam* against the owners of it. "Whether they all resided in the Territory or not does "not appear, nor is it a matter of any importance. No "person is required to answer in a suit on whom pro- "cess has not been served, or whose property has not "been attacked. In this case there was no personal "notice, nor an attachment or other proceeding against "the land, until after the judgments. The judgments, "therefore, are nullities." * * * This case is cited with approval in *Pennoyer* v. *Neff*, 95 U. S., p. 728.

See also *U. S.* v. *Burke*, 99 Fed. pp. 899–900.

In *State* v. *Guilbert*, 47 N. E. 556, the Supreme Court of Ohio held a statute unconstitutional on similar grounds. The Court say: "The act does not require "a petition or bill such as is appropriate in suits be- "tween adverse parties, nor does it require or contem- "plate that a summons or equivalent preliminary pro- "cess shall issue from the Court advising those who "claim an interest in the land to be registered that their "alleged interests are to be the subject of adjudication "in the proceeding. Both by the terms of the act and "the form which it prescribes, the only notice required "is to be given by the applicant. In the notice so re- "quired to be given, no one claiming an interest ad- "verse to that of the applicant is to be named, although "the names, places of residence and alleged interests "of all who claim adversely are known." They go on to say that merely *calling* the proceeding one *in rem* does not help it out—that it has no analogy to a proceeding in rem, the *res* not being taken into possession of any officer of the Court—that it differed in no substantial respect from a suit in *quia timet* to settle title. That the judicial force of the proceeding is wholly expended in a conclusive determination of the rights of the persons in the land. All of which, we submit, fully applies here, and we ask the attention of the Court to the able opinion in which these questions are dealt with.

Webster v. *Reid* is cited, also *Brown* v. *Board*, 50 Miss. 468, to which we invite the particular attention

of the Court as directly in point and as a most forcible and convincing demonstration of the correctness of our contention. We challenge counsel to distinguish that case from this, or to successfully combat the reasoning of the opinion.

It is but fair to the Court to call to its attention some other cases which may be claimed and which have been claimed to be contrary to the doctrine of the Ohio case. But, we submit, that on investigation and careful consideration, they will be found, not to weaken it, even if approved by this Court, which we submit they should not, because in so far as they differ from the Ohio and Mississippi cases, they do not commend themselves to the judicial mind. On the contrary, we submit, that as applied to the facts of this case they are authorities rather in favor of our contention than against it.

In *People* v. *Simon*, 52 N. E. Rep. 910, the Supreme Court of Illinois had occasion to consider the Ohio cases above cited, and said (p. 915) " with its conclu-" sion, viz., that the Ohio statute was unconstitutional, " we agree, but what is said in argument cannot be " adopted as applicable to this case." The main ground of the Ohio decision is then stated, as we have quoted it; and, as we take it, approved. So far as the Illinois case is in point and authority it is in our favor, for if the Ohio statute was unconstitutional, then undoubtedly and for every reason, our statute is also unconstitutional. In so far as the Ohio statute differed from

that of Illinois, and in so far, therefore, as parts of the opinion in the Ohio case were not applicable to the Illinois case, the Illinois case is not here in point. On the substantial points our statute is like the Ohio statute.

Even in the respects in which the Illinois case differed from the Ohio case and from ours, it is authority in our favor on other propositions. So far as the Illinois statute was upheld it was as a statute of limitations, but nowhere is the true doctrine on that point better expressed. They say, concerning the provision, that all parties, whether personally served or not, must appear within two years: "This provision seems to "attempt to make a decree binding upon persons *not* "*parties to the suit*, and if given effect literally, would "deprive persons of vested rights without due process "of law. A limitation may be placed upon the time "within which a person *who has a mere right of action* "shall bring it, but 'limitation laws cannot compel a "'resort to legal proceedings by one who is already in "'the complete enjoyment of all he claims.' *Cooley* "*Const. Lim.*, p. 366. To the extent that the act at-"tempts to transfer property without due process of "law it cannot be upheld."

That is to say, our statute cannot be upheld at all, for as construed by the Supreme Court of the State of California it attempts to take, or, which is the same thing, incumber property in possession, and not mere right of action, as against persons not parties to the suit.

The Illinois case also agrees with the Mississippi and Ohio cases as to the necessity of personal service on residents. They say that when a substituted service is permitted, it is *because of the necessities of the case*, and that the Illinois statute *did* provide for personal service in some cases, and for publication in case of unknown residents and of non-residents.

Barnard v. *Anderson*, 44 Minn. 97; 46 N. W. Rep. 315, is a strong case in our favor. It is there held that in a suit to foreclose a mortgage, service of summons by publication in a newspaper upon resident defendants, who are personally within the State, and can be found therein, is not due process of law, and that a statute assuming to provide for such service in actions to foreclose mortgages is unconstitutional and void.

We submit that there is no sufficient precedent and no valid reason for upholding the power of the legislature to provide for proceedings which shall bind or conclude all the world by a decree of the kind rendered in the confirmation proceedings; and that where similar statutes have been upheld even by a divided Court, it has been with reluctance and hesitation, and only because the statutes differed from ours in many respects and particularly in that they did provide for actual personal service on known residents, and only authorized publication where and in so far as *necessity* required and justified it, as in case of non-residents or unknown residents. And further, that the weight of authority and the better reason is that even in such exceptional cases,

no one can be bound who is not made a party to the suit.

The Massachusetts case is *Tyler* v. *Judges*, 55 N. E. 812. That was decided by a divided court and against a powerful, and, we submit, unanswerable dissenting opinion. We ask the Court's particular attention to that opinion and the authorities there cited. It will be noticed that most of or a very great part of what is said in the opinion of Chief Justice Holmes is not only dicta, but avowedly the mere personal view of the writer, not concurred in by a majority of the Court. He says, p. 815: "A majority of the Court prefer to as- " sume that in cases in which, under the constitutional " requirements of due process of law, it heretofore has " been necessary to give to parties interested actual no- " tice of the pending proceeding by personal service or " its equivalent, in order to render a valid judgment " against them, it is not in the power of the legislature, " by changing the form of the proceedings from an ac- " tion *in personam* to a suit *in rem*, to *avoid the necessi-* " *ty of giving such a notice*, and to assume that under " this statute, personal rights in property are so in- " volved and may be so affected, that effectual notice " and an opportunity to be heard, should be given to " *all claimants who are known or who by reasonable ef-* " *fort can be ascertained.*"

And even of a statute complying with those constitutional requirements, as held, he said it was not to be upheld without anxiety. Our statute differs from that

of Massachusetts, among other things, in utterly failing to make any provision for actual notice or its equivalent, even as to *known residents*.

VII.

IF THE STATUTE PROVIDING FOR THE CONFIRMATION ACT WAS DESIGNED TO MAKE THE DECREES IN CONFIRMATION PROCEEDINGS CONCLUSIVE OF THE RIGHTS OF LAND HOLDERS AND BINDING UPON THEM, IT MUST FOLLOW THAT THE PROVISION IS REPUGNANT TO THE PROHIBITION OF THE DENIAL OF THE EQUAL PROTECTION OF THE LAWS, FOUND IN THE XIVth AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It will be observed that the point or reason in respect whereof the Supreme Court of the United States differs from the Supreme Court of California, in regard to the confirmation act, is here most pertinent. As estoppels must be mutual and as the bondholders could not be bound by the confirmation proceeding, so neither the property owners nor the land can be bound. If you assume with the State Court to treat the confirmation decree as *judicial*, the injustice and futility of any attempt to hold one party to it bound and leave the other free is most glaring. And even if you treat it as *evidence*, it is an unheard of and hitherto unattempted thing for a statute to declare an act or instrument conclusive evidence against some of the parties to be affected and of no avail as against others equally affected. Such a discrimination would constitute class legislation of

the most arbitrary and *indefensible* description.

The prohibition against class or special legislation contained in section 25 of article IV of the Constitution of California, is to all legal intent identical with the provision in the 14th Amendment to the Constitution of the United States against the denial of the equal protection of the law.

So much so, that it can be broadly and confidently asserted that whenever a statute offends against the State prohibition, for the very same reasons and upon the very same principles and tests, it equally falls as repugnant to the 14th Amendment. It follows that no decision of the State Court in so far as that Court holds this confirmation not to be special legislation under the State constitution, is *binding* on this Court, because if this Court holds that it is such special legislation, it must follow its own independent judgment; for the reason that in so differing with the State Court it *ipso facto* determines that the statute violates the 14th Amendment.

In *Krause* v. *Durbrow*, 60 Pac. 438 (127 Cal. 681), it was held that the Legislature could not discriminate between mining and other corporations by allowing the holder of the certificates of mining stock to vote at a corporate election on production of the certificate, while in other corporations only registered shareholders are entitled to vote. In *Johnson* v. *Goodyear Mining Co.*, 59 Pac. 304, (127 Cal. 4) a statute applying to all corporations doing business in the State and regulating

the payment of wages to their employees was held invalid as in conflict both with the State and Federal constitutions. These decisions are in harmony with the trend and current of judicial thought elsewhere, as is shown in the opinions of Justice Harrison and Commissioner Cooper, the latter being a most masterly and exhaustive review of the law on this subject. Every reason given why these statutes conflicted with the State constitution applies with equal force to show that they conflict with the 14th Amendment. To prove this it is only necessary to compare the rules formulated by the Supreme Court of the United States as a test by which to determine what is a deprivation of the right to equal protection of the law, with that formulated by the California Supreme Court as a test to determine what is special legislation. The thought and language will be found to be the same.

Ch. J. Beatty, in City of *Pasadena* v. *Stimson*, 91 Cal. 251, thus expresses it: "The conclusion is, that although "a law is general and constitutional when it applies "equally to all persons embraced in a class founded "upon some natural or intrinsic or constitutional dis- "tinction, it is not general or constitutional if it confers "particular privileges or imposes peculiar liabilities or "burdensome conditions in the exercise of a common "right, upon a class of persons arbitrarily selected from "the general body of those *who stand in precisely the* "*same relation to the subject of the law.*"

This is approved and followed in *Kraus* v. *Durbrow*,

where it is also laid down that while the legislature may classify for the purposes of legislation, the classification must not be arbitrary; and the class must not only be germane to the purpose of the law, but must also be characterized by some substantial qualities or attributes reasonably indicating the necessity or propriety of the discrimination.

Turning to the formulation of the rule under the 14th Amendment, we find in *Gulf &c.* v. *Ellis*, 165 U. S. 152, the following: "Such a classification cannot be " made arbitrarily. * * * That must always rest " upon some difference which bears a reasonable and " just relation to the act in respect to which the classi- " fication is proposed, and can never be made arbitrarily " and without any such basis. * * * It is apparent " that the mere fact of classification is not sufficient to " relieve a statute from the reach of the equality clause " of the 14th Amendment, and that in all cases it must " appear not only that a classification has been made, " but also that it is one based upon some reasonable " ground—some difference which bears a just, a proper " relation to the attempted classification, and it is not a " mere arbitrary selection."

In *Cullen* v. *Glendora Water Co.*, 113 Cal. 514, it was held that the provision in the confirmation act that a motion for a new trial must be made on the minutes of the Court, was special legislation and unconstitutional; and it was said: "The subject of the law in " question is the *mode* of moving for new trials in the

" Superior Courts, to which subject the parties to all " actions and special proceedings stand in precisely the " same relation as do the parties to the small class of " special proceedings, to which, alone, this law is made " applicable, and should equally share the peculiar " privileges conferred or equally suffer the disabilities " and burdens imposed by it; since no discrimination in " the application of the law is justified by any peculiar " characteristic of the object of the law, or of the " parties to the special proceeding to which the law " applied."

We submit that this proposition and every word of the opinion of Commissioner Vanclief in support of it, equally and in all its force applies to other vital and essential provisions of the confirmation act dispensing with the general laws in force governing procedure in judicial proceedings. If the legislature could not provide a special mode of moving for a new trial, then for the same reasons and all the reasons, it could not provide a special mode of service. The land owners here, a small, well-defined and known body of citizens, could not thus be classified and subjected to harsh and novel process to bring them into Court. If in all other cases, the *Code of Civil Procedure* provided a mode of service on unknown or absent owners of land, these owners, if unknown or absent, were entitled to the same procedure. And there is no *conceivable* reason why in such case the usual method of service by publication of summons should not be resorted to. Such of the owners as were

known and residents of the State were for the same reason entitled to personal service of summons, and all were entitled to be made *parties* to any *judicial* procedure by which they were sought to be bound. Even if the bonds had been already issued and sold, so as to obviate some of Justice Brewer's objections, the statute would be void, as denying the equal protection of the law. For then there would have been a controversy in no wise calling for any special or discriminating legislation, any more than a controversy between a mortgagee and a mortgagor and all his privies, would call for or justify such a classification or discrimination. In either case the only parties interested are the mortgagee and all the parties interested in the land. In many cases an asserted and controverted lien or incumbrance may cover a large tract of land in which many subsequent parties may claim an interest which must be foreclosed. For that purpose the usual and regular procedure is ample and all sufficient; and surely the mere size of the tract of land, or the number of subsequent vendees or parties interested cannot furnish a ground of classification or discrimination. The case is only more glaring when the proceeding is taken in advance of the issue of the bonds. For then an additional and palpably unjust discrimination is made, in the hitherto unheard of attempt to authorize the rendition of a decree which shall absolutely bind some of the parties concerned and leave the others absolutely free and unaffected. If the

14th Amendment secures "law in its *regular adminis-* " *tration* through Courts of Justice—a course of legal " proceedings according to those rules and forms which " have been established for the protection of private " rights—a proceeding appropriate to the case and just " to the parties affected."

Alexander v. *Gordon*, 101 Fed. 96.

We ask again why these land owners were not as much entitled to the benefit of usual and established forms of summons and service, as to the usual mode of moving for a new trial? Is the summons by which I am first brought into Court *less* important to me than the rules of practice by which I am to be governed after I appear? Really the State Court to be consistent should have decided that the right to move for a new trial in this class of cases could have been taken away altogether; or that the whole Act was unconstitutional.

Again, if mining corporations cannot be classified as was attempted in *Krause* v. *Durbrow*, how can irrigation districts be classified as here attempted? What peculiarity is there about an irrigation district, which justifies an exceptional method of framing complaints and serving summons? Upon the reasoning of Justice Harrison in *Krause* v. *Durbrow* and of Commissioner Cooper in *Johnson* v. *Goodyear*, we submit, absolutely none. In every conceivable case where assessments for benefits are to be made and bonds issued, there could be advanced precisely the same reasons for discrimination and departure from the usual course of procedure.

Why then single out arbitrarily this particular class of property owners and deny them the usual safeguard of orderly process, accorded to all others in *consimili casu*?

VIII.

THE ALLEGED DECREE OF CONFIRMATION MADE IN 1890 BY THE SUPERIOR COURT OF TULARE COUNTY IS VOID AND THEREFORE NOT AN ESTOPPEL AGAINST EITHER THE DISTRICT OR THE LAND OWNERS THEREIN. THE DECISION IS VOID BECAUSE IT APPEARS ON THE FACE OF THE RECORD IN THE CONFIRMATION PROCEEDING THAT NOTICE OF THE HEARING OF THE PETITION WAS NOT GIVEN IN THE MANNER PRESCRIBED BY THE STATUTE.

No presumption can be indulged in favor of the jurisdiction of a Court of inferior jurisdiction, or of any Court in a special statutory proceeding.

Galpin v. *Page*, 18 Wall. 350.

And, even in the case of a Court of general jurisdiction, acting in the exercise of its ordinary powers, a recital in a judgment that jurisdiction has been acquired is always limited and controlled by the record, when the latter shows the manner in which jurisdiction has been attempted to be acquired. If the mode shown to have been pursued evinces that jurisdiction was not obtained, jurisdiction will not be presumed because of the recital; nor will it be presumed that jurisdiction was acquired in some way different from that appearing of record.

Foster v. *Givens*, 67 Fed. Rep. 684, 691–692;
Dick v. *Foraker*, 155 U. S. 404, 15 Sup. Ct. 128;

Pearson v. *Pearson*, 46 Cal. 636–637;
Galpin v. *Page*, 18 Wall. 350;
Hahn v. *Kelly*, 34 Cal. 391, 407;
Settlemeir v. *Sullivan*, 97 U. S. 444;
Cheeley v. *Clayton*, 110 U. S. 701.

The notice of the filing of the petition for confirmation was posted by Edward Oakford, who claims to have been at the same time secretary of the board of directors of Tulare Irrigation District. (*Record* p. 283).

The Confirmation Act provides in section three (Stats. of Cal. 1889, p. 212) (*supra*, p. 74):

" The Court shall fix the time for the hearing of " said petition and shall order the clerk to give and " publish a notice of the filing of said petition."

The giving and publishing of the notice in the mode prescribed by the statute is, of course, jurisdictional. No other mode, however efficacious, can be sustained.

Macadamizing Co. v. *Williams*, 70 Cal. 541.

The notice required to be given is in the nature of process.

Williams v. *Bergin*, 108 Cal. 166, and cases there cited;
Dupont v. *Comrs.*, 28 Mich. 362;
Boynton v. *People*, 39 N. E. Rep. 622;
Neppach v. *Jordan*, 10 Pac. Rep. 341; s. c. 13 Oregon 246;
Railway Co. v. *Superior Court*, 79 Cal. 103, 104, 105;
Mulligan v. *Smith*, 59 Cal. 206, 243, per McKinstry, J.;

Scammon v. *Chicago*, 40 Ill. 146, 147–149.

The giving of notice is an official act.

Assessors v. *Clifton*, 33 Me. 369.

In the case of constructive service the notice or process which is essential to acquire jurisdiction either of the subject matter or of the person, can be given or served only in the manner and by the person or persons prescribed by the statute creating the jurisdiction.

Those persons only give or serve or publish the notice or process who have the peculiar qualifications, and who are appointed in the manner prescribed by the statute, since the giving or serving or process whereby a party may be affected in his person or property is entirely dependent for its efficacy upon the statute authorizing it (*Minard* v. *Douglass Co.*, 7 Or. 209, 210). Service or publication by any one else is absolutely void.

McMillan v. *Reynolds*, 11 Cal. 372;
Doerfler v. *Smidt*, 64 Cal. 264;
Lyons v. *Cunningham*, 66 Cal. 42;
Barney v. *Vigouneaux*, 75 Cal. 376;
Horton v. *Callardo*, 88 Cal. 581;
Williamson v. *C. R. D. Co.*, 95 Cal. 652;
Pinckard v. *Davis*, 35 S. W. Rep. 921;
U. M. F. I. Co. v. *Page*, 61 Mich. 72; s. c. 27 N. W. Rep. 859;
Davis v. *Hamilton*, 53 Ill. App. 94;
Gadsby v. *Stimer*, 44 N. W. Rep. 606;
Prickett v. *Cleck*, 11 Pac. Rep. 49;
Hammil v. *Ferrier*, 45 Pac. Rep. 522;
Kincaid v. *Frog*, 31 Pac. Rep. 704; s. c. 13 Or. 415;

Mitchell v. *Shaw*, 53 Mo. App. 652;
William v. *Hutchinson*, 7 So. R. 852; s. c. 26 Fla. 513;
Dolan v. *Topping*, 32 Pac. Rep. 1120;
Lazzarone v. *Oishei*, 21 N. Y. Supp. Rep. 267;
Douthit v. *Martin*, 39 S. W. Rep. 944.

The question whether or not the parties intended to be affected by constructive notice obtain actual notice, where the service prescribed must be purely constructive, is immaterial.

Williams v. *Bergin*, 108 Cal. 166, *supra*;
O'Hare v. *Town of Park River*, 47 N. W. Rep. 380;
Bitting v. *Douglass Co.*, 33 Pac. Rep. 981;
Fox v. *Middlesborough*, 28 S. W. Rep. 776;
Lusk v. *Perkins*, 2 S. W. Rep. 847;
Verona v. *Alleghany, etc. R. Co.*, 25 Atl. Rep. 518;
Osborne v. *Columbia, etc. Corpn.*, 38 Pac. Rep. 160.

It is manifest from the authorities cited, from the specific provisions of section three of the Confirmation Act, and because the giving of notice is an official act, that the posting of notices by Edward Oakford was a futile and void act.

The Clerk of the Court alone was charged officially with the duty of giving and publishing the notice of the filing of the petition for confirmation, and he could not delegate his power in that regard to a private individual. For it does not appear that Oakford was deputized by the Clerk to act in his behalf, as a deputy, in posting the notices. *Delegatus non potest delegare* applies as

well to public officers as to private individuals.

"Deputy"—*5 Am. & Eng. Ency. of Law*, 623 and notes;
City of Oakland v. *Carpentier*, 13 Cal. 540;
Sayre v. *Nichols*, 7 Cal. 535, 542;
People v. *Town of Linden*, 107 Cal. 94, 100.

Since, therefore, Oakford was neither a deputy of the clerk, nor acting under the sanction of an official oath, he was acting in a merely private capacity. His acts were, therefore, absolutely nugatory.

This appears on the face of the record and shows, therefore, a want of jurisdiction in the Court to pronounce the judgment which it caused to be entered in the confirmation case.

IX.

ASSUMING THAT THE RECORD SHOWS THAT THE COURT HAD JURISDICTION IN THE CONFIRMATION PROCEEDINGS, THEN THE SECOND JUDGMENT OR DECREE, MADE BY JUDGE GRAY, AND ENTERED NOVEMBER 23rd, 1898 (*Record* p. 410), IS THE ONLY JUDGMENT OR DECREE IN FORCE.

For when in an action two judgments appear the later in point of time must prevail in the absence of some showing invalidating the second one.

Paige v. *Roeding*, 96 Cal. 388, 391;
Colton L. & W. Co. v. *Schwartz*. 99 Cal. 278, 281–283;
Von Schmidt v. *Von Schmidt*, 104 Cal. 547, 549–550;
Cf. Freeman v. *Spencer*, 60 Pac. Rep. 979, 980–981.

Since on a direct attack upon the second judgment on appeal therefrom, the presumption of its validity would prevail unless it were impeached by the record; *a fortiori* must its validity be sustained on a collateral attack.

Galvin v. *Palmer*, 66 Pac. Rep. (Cal.) 572.

X.

THE TWO YEARS' STATUTE OF LIMITATIONS PRESCRIBED BY SECTION THREE OF THE WRIGHT LAW, AS AMENDED IN 1891 (STATS. 1891, p. 144), DOES NOT PRECLUDE AN ATTACK UPON THE VALIDITY OF THE DEFENDANT DISTRICT.

The Bridgford bill (Stats. 1897, pp. 254–287) is a complete revision of and substitute for the Wright Law, with its amendments; and upon well known rules of statutory construction the bill was an absolute repeal of the law.

Dillon v. *Bicknell*, 116 Cal. 111, 114;
Pana v. *Bowler*, 107 U. S. 529;
Cook County Nat. Bk. v. *United States*, 107 U. S. 445;
District of Columbia v. *Hutton*, 143 U. S. 18.

The Bridgford bill contains no statute of limitations preventing an attack on the validity of the organization of irrigation districts.

Moreover, the Bridgford bill contains ample provision repealing the Wright Law and its amendments. Section 110 of the bill (Stats. 1897, p. 287) (*supra* p. 158)

reads as follows:

"SEC. 110. Nothing in this act shall be construed "as repealing or in anywise modifying the provisions "of any other act relating to the subject of irrigation "or water commissioners, except such as may be con- "tained in the act, entitled an act to provide for the "organization and government of irrigation districts, "and to provide for the acquisition of water and other "property, and for the distribution of water thereby for "irrigation purposes, approved March seventh, eigh- "teen hundred and eighty-seven, and the subsequent "acts supplementary thereto, and amendatory thereof, "all of which acts, so far as they may be inconsistent "herewith, are hereby repealed."

The legislature had plenary power to repeal so much of the Wright Law and its amendments, as limited the time within which the organization of an irrigation district might be assailed. For a statute of limitations may be repealed so as to revive against a debtor a contract debt already barred, without depriving him of his property in violation of the Fourteenth Amendment to the Constitution. The bondholders in this case stand in no better position than such a contract debtor does.

Campbell v. *Holt*, 115 U. S. 620; s. c. 6 U. S. Ct. Repr. 209;
Hulbert v. *Clark*, 128 N. Y. 295, 297–298;
Landa v. *Obert*, 76 Tex. 33, 46; s. c. 14 S. W. Rep. 297, 300;
Lewis v. *Davidson*, 51 Tex. 257.

The limitation clause in the Amendment of 1891 (Stats. 1891, p. 144) (*supra* p. 36) to section 3 of the Wright Law (Stats. 1887, pp. 30, 31) (*supra* p. 32) is not germane to the original act, nor within the scope of its title. The amendment is, therefore, void.

Weigel v. *City of Hastings*, 45 N. W. Rep. 694, 696; s. c. 29 Neb. 379;
Holmberg v. *Hauck*, 20 N. W. Rep. 279; s. c. 16 Neb. 337;
State v. *Nomland*, 57 N. W. Rep. 85, 87; s. c. 3 North Dak. 427;
Percival v. *C. & W. H. Irr. Dist.*, 46 Pac. Rep. 1035–1036;
Bell v. *State*, 20 So. Rep. 450;
Thomas v. *Wabash etc., Ry. Co.*, 40 Fed. Rep. 126; s. c. 7 L. R. A. 545; s. c. 57 N. J. L. 143;
Spier v. *Baker*, 120 Cal. 370;
City of Detroit v. *Donovan*, 70 N. W. Rep. 894.

Section 24 of Article IV of the Constitution of California reads as follows:

"Every Act shall embrace but one subject, which "subject shall be expressed in its title."

The title of the Wright Law gives no intimation warranting any provision therein regulating the practice of courts of justice, or that the time for the commencement of any action, or for the making of any defense, such as the one in question, shall have any special limitation.

It is a well established rule that statutory limitations pertain to the remedy and are enforced only by the

Courts of the forum. They pertain, therefore, only to matters of practice.

The limitation clause is void because it is special legislation violating subdivision three of section 25 of article VI of the Constitution of California.

It is void also because violating subdivision 32 of of said section 25.

It is void also because violating subdivision 33 of said section 25.

Section 25 of article IV of the Constitution of California prohibits special legislation in the following cases:

"3rd. Regulating the practice of courts of justice.

"32nd. For limitation of civil or criminal actions.

"33rd. In all other cases where a general law can "be made applicable."

There is no sound reason why a special statute of limitations should be enacted in favor of irrigation districts, not equally applicable to other quasi public corporations.

Cullen v. *Glendora*, 113 Cal. 503;
Foxworthy v. *Hastings*, 37 N. W. Rep. 657, 660;
Ex parte Clancy, 90 Cal. 553;
City of Tulare v. *Hevrin*, 58 Pac. Rep. 530, and cases there cited;
Johnson v. *Goodyear Min. Co.*, 59 Pac. Rep. (Cal.) 304;
Krause v. *Durbrow*, 60 Pac. Rep. (Cal.) 438;
Pasadena v. *Stimson*, 91 Cal. 238;
Bruch v. *Colombet*, 104 Cal. 347;

People v. *C. P. R. R. Co.*, 105 Cal. 576;
Cf. Simpson v. *Kentucky etc., Assn.*, 41 S. W. Rep. 570.

The provision that no defense shall be made affecting the validity of the organization of an irrigation district, unless made within two years after the entry of the order declaring the district organized is unconstitutional. It is an attempt to deprive persons of property without due process of law. A statement of the rule governing cases of this kind is found in *Cooley's Constitutional Limitations* at page 366. It is there said:

"All limitation laws, however, must proceed on the "theory that the party, by lapse of time and omissions "on his part, has forfeited his right to assert his title "in the law. * * * One who is himself in the "legal enjoyment of his property cannot have his "rights therein forfeited to another for failure to bring "suit against that other within a time specified, to test "the validity of a claim which the latter asserts, but "take no steps to enforce. * * * Limitation laws "cannot compel a resort to legal proceedings by one "who is already in the complete enjoyment of all he "claims."

Citing:

Groesbeck v. *Seeley*, 13 Mich. 329;
Case v. *Dean*, 16 Mich. 12;
Baker v. *Kelly*, 11 Minn. 480.

See also,

People v. *Simon*, 52 N. E. Rep. at p. 915.

CONCLUSION.

For the reasons which we have stated in the foregoing discussion, it is submitted that the attempted organization of the Tulare Irrigation District was absolutely ineffective and void, and that the purported bonds were issued without any valid authority and were null and void, even in the hands of *bona fide* purchasers for value, without actual notice of the defects in the proceedings which resulted in the issuance of the bonds. It is further submitted that the Circuit Court erred in refusing to allow the plaintiffs in error to prove the facts which show the invalidity of the district, and in giving judgment for the plaintiff upon evidence such as that adduced by him; and that the judgment should be reversed.

Respectfully submitted,

Calvin L. Russell
G. W. Zartman
Caml Gar bert
George H. Maxwell
R. M. T. Fulton

Attorneys for plaintiff in error, Tulare Irrigation District.

Calvin L. Russell
G. W. Zartman
Caml Gar bert

Attorneys for plaintiffs in error, George G. Kelly and G. Garibaldi, executor of the will of B. W. Jauchius, deceased.